

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 17-1405 (L), 17-1411 (Con)

Caption [use short title]

Motion for: Certificate of Appealability

Rajaratnam v. United States of America

Set forth below precise, complete statement of relief sought:

Mr. Rajaratnam requests a Certificate of
Appealability for the denial of his Motion to
Vacate Convictions and Sentence under
28 U.S.C. 2255.

MOVING PARTY: Raj Rajaratnam

OPPOSING PARTY: United States of America

☒ Plaintiff

☐ Defendant

☒ Appellant/Petitioner

☐ Appellee/Respondent

MOVING ATTORNEY: Christine H. Chung, Esq.

OPPOSING ATTORNEY: Michael Ferrara, Esq.

[name of attorney, with firm, address, phone number and e-mail]

Quinn Emanuel Urquhart & Sullivan, LLP

United States Attorney's Office, Southern District of New York

51 Madison Ave., 22nd Fl., New York, NY 10010

1 St. Andrew's Plaza, New York, NY 10007

(212) 849-7000, christinechung@quinnemanuel.com

(212) 637-2526, michael.ferrara@usdoj.gov

Court-Judge/Agency appealed from: United States District Court for the Southern District of New York (Hon. Loretta A. Preska)

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):

☒ Yes ☐ No (explain):

Opposing counsel's position on motion:

☐ Unopposed ☒ Opposed ☐ Don't Know

Does opposing counsel intend to file a response:

☐ Yes ☒ No ☐ Don't Know

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND
INJUNCTIONS PENDING APPEAL:

Has request for relief been made below?

☐ Yes ☐ No

Has this relief been previously sought in this Court?

☐ Yes ☐ No

Requested return date and explanation of emergency:

Is oral argument on motion requested?

☒ Yes ☐ No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set?

☐ Yes ☒ No If yes, enter date:

Signature of Moving Attorney:

/s/ Christine H. Chung

Date: June 6, 2017

Service by: ☒ CM/ECF

☐ Other [Attach proof of service]

17-1405(L), 17-1411(Con)

IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

RAJ RAJARATNAM,

Plaintiff-Appellant,

v.

UNITED STATES,

Defendant-Appellee.

*On Appeal From The United States District Court
For The Southern District of New York,
Hon. Loretta A. Preska, District Judge*

MOTION FOR A CERTIFICATE OF APPEALABILITY PURSUANT TO 28 U.S.C. § 2253(c)

QUINN EMANUEL URQUHART
& SULLIVAN, LLP
51 Madison Ave., 22nd Fl.
New York, NY 10010
(212) 849-7000

JONES DAY
250 Vesey Street
New York, NY 10281-1047
(212) 326-3939

Attorneys for Plaintiff-Appellant

TABLE OF CONTENTS

	<u>Page</u>
PRELIMINARY STATEMENT	1
ISSUE PRESENTED	3
LEGAL STANDARD.....	4
CASE SUMMARY.....	4
A. The Indictment and Trial.....	4
B. The Sentencing and Forfeiture Judgment	7
C. The Section 2255 and <i>Coram Nobis</i> Proceedings.....	8
ARGUMENT:	
THE CERTIFICATE OF APPEALABILITY SHOULD BE GRANTED	11
A. Count Two: The Roomy Khan Conspiracy (Polycom, Hilton, and Google Trades)	12
B. Counts Five, Eight, Nine and Ten: The Akamai Trade	16
C. The ICST Trade Underlying Count One	19
CONCLUSION	21

TABLE OF AUTHORITIES

	<u>Page</u>
<u>Cases</u>	
<i>Barefoot v. Estelle</i> , 463 U.S. 880 (1983).....	4
<i>Bousley v United States</i> , 523 U.S. 614 (1998).....	11
<i>Buck v. Davis</i> , 137 S. Ct. 759 (2017).....	4
<i>Dirks v. SEC</i> , 463 U.S. 646 (1983).....	13, 15
<i>Finkelstein v. Spitzer</i> , 455 F.3d 131 (2d Cir. 2006)	10
<i>Miller-El v. Cockrell</i> , 537 U.S. 322 (2003).....	4
<i>Salman v. United States</i> , 137 S. Ct. 420 (2016).....	1, 17, 18
<i>United States v. Baptiste</i> , 223 F.3d 188 (3d Cir. 2000)	10
<i>United States v. Contorinis</i> , 692 F.3d 136 (2d Cir. 2012)	9
<i>United States v. Loschiavo</i> , 531 F.2d 659 (2d Cir. 1976)	11
<i>United States v. Lozado</i> , 107 F.3d 1011 (2d Cir. 1997)	4
<i>United States v. Newman</i> , 773 F.3d 438 (2d Cir. 2014), <i>abrogated on other grounds by</i> <i>Salman v. United States</i> , 137 S. Ct. 420 (2016),	<i>passim</i>
<i>United States v. Rajaratnam</i> , 2012 WL 362031 (S.D.N.Y. Jan 31, 2012)	7

Statutes

28 U.S.C. § 2255	2, 8
Fed. R. App. P. 22(b)	4

Miscellaneous

U.S.S.G. § 2B1.4.....7

PRELIMINARY STATEMENT

The conviction of Raj Rajaratnam, in May 2011, on 14 counts of securities fraud and conspiracy to commit securities fraud, resulted in the highest sentence ever imposed for insider trading in the Southern District of New York—11 years’ imprisonment. On multiple counts, however, Rajaratnam was convicted of conduct that does not constitute insider trading under *United States v. Newman*, 773 F.3d 438 (2d Cir. 2014), *abrogated on other grounds by Salman v. United States*, 137 S. Ct. 420 (2016). At the very least, Rajaratnam’s actual innocence on those counts is a matter of “reasonable debate,” and therefore an appropriate subject for appeal.

This Court in *Newman* held that when a defendant is remote from the corporate insider, a conviction for insider trading requires proof that the defendant knew that the insider disclosed confidential information in exchange for a personal benefit. 773 F.3d at 449. That holding remains good law. While the Supreme Court, in *Salman*, expanded the definition of “personal benefit” announced in *Newman*, it did not alter the requirement of a defendant’s knowledge of that benefit. 137 S. Ct. at 425 n.1, 428. The government insisted throughout Rajaratnam’s trial that it was under no such burden, however. As a result, for five of the 14 counts of conviction, and nearly half of the \$63.8 million gain figure accepted at sentencing, there was no proof of guilt.

On the ground of this failure of proof, Rajaratnam sought vacatur of the affected convictions under 28 U.S.C. § 2255, and resentencing. He also petitioned for a writ of error *coram nobis*, arguing that the forfeiture order of \$53.8 million should be amended. Rajaratnam has appealed the denial of his *coram nobis* petition, as of right, and that appeal will raise his *Newman*-based claim of “actual innocence.” Rajaratnam moves this Court to request the certificate that will permit his appeal of the denial of his Section 2255 motion as well. Ex. A (Order denying motion).¹ The District Court denied Rajaratnam’s motion for a certificate of appealability (“COA”). Ex. B.

This motion should be granted. The prosecution focused upon less than 20 of the more than 36,000 trades that Rajaratnam personally executed between 2005 and 2009. In the case of the five trades that were the subject of the Section 2255 motion, there was no evidence that Rajaratnam knew that an insider remote to him had received a personal benefit in exchange for providing confidential information.

In lieu of such evidence, the District Court, when it denied Rajaratnam’s Section 2255 motion, deemed it reasonable for the jury to infer that Rajaratnam would have recognized that insiders remote to him had received personal benefits. The District Court reasoned that having himself conferred a personal benefit on the

¹ The two appeals have been consolidated. “Ex. __” herein refers to an exhibit attached to the Declaration of Christine H. Chung submitted in support of this motion. Trial exhibits cited herein are also annexed to that declaration.

intermediary, in the form of an exchange of inside information, Rajaratnam must have “understood that this sort of confidential information is not provided to individuals without exchange of some benefit.” Ex. A at *5. But the government relied on the same assumption in *Newman*, where it argued that it could be assumed that Newman, who had paid his intermediary hundreds of thousands of dollars, would have known that the remote insider must have disclosed information “for some personal reason rather than for no reason at all.” 773 F.3d at 454 (quoting Ex. C (Gov’t Br. in *Newman*) at *65). This Court rejected that argument, and the premise that the only reason an insider discloses inside information is for a personal benefit, as opposed to reasons such as a desire to share information with analysts, carelessness, or a mistaken belief that the information is already public. *Id.* at 454-55.

This Court should hear the question of whether Rajaratnam is actually innocent of five of the Counts on which the jury returned guilty verdicts.

ISSUE PRESENTED

Mr. Rajaratnam requests a COA on the question of whether in light of *United States v. Newman*, 773 F.3d at 438, he is “actually innocent” of Counts Two, Five, Eight, Nine, Ten, and the ICST trade underlying Count One.²

² Rajaratnam does not seek a COA as to other issues he raised below, namely whether: (1) prior counsel’s failure to appeal the correctness of the jury

LEGAL STANDARD

A motion for a COA must first be made in the district court, and if the district court denies the request, then in the appeals court. Fed. R. App. P. 22(b); *United States v. Lozado*, 107 F.3d 1011, 1016-17 (2d Cir. 1997).

The Supreme Court has held that a defendant need not demonstrate that he is likely to prevail on the merits, but is entitled to a COA merely upon a showing of a question that “reasonable jurists could debate.” *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (quotation marks omitted); *accord Buck v. Davis*, 137 S. Ct. 759, 773 (2017) (“The COA inquiry . . . is not coextensive with a merits analysis.”). The defendant should obtain the appeal if “the issues are debatable among jurists of reason; . . . a court could resolve the issues in a different manner; or . . . the questions are adequate to deserve encouragement to proceed further.” *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983) (quotation marks omitted).

CASE SUMMARY

A. The Indictment and Trial

The government proceeded to trial on a superseding indictment returned on January 20, 2011. Ex. D. The first five Counts charged conspiracies to commit securities fraud, with each conspiracy defined by the identity of the individual who allegedly passed inside information to Rajaratnam. In Counts Three and Four,

instruction constituted ineffective assistance, and (2) the testimony of cooperator Anil Kumar was perjurious and fatally tainted certain Counts of conviction.

Rajiv Goel and Anil Kumar, who were insiders at Intel and McKinsey & Co., respectively, were alleged to have directly tipped Rajaratnam, the founder of Galleon Group. In Counts One, Two and Five, to the extent relevant here, former Galleon employees Adam Smith and Roomy Khan, and Danielle Chiesi, an employee of hedge fund New Castle Partners, respectively, were alleged to have obtained the inside information they passed to Rajaratnam from others, such that Rajaratnam was remote from the corporate insider.³

At trial, conducted in March to May of 2011, the government called only three cooperating witnesses who claimed to have provided inside information to Rajaratnam: Adam Smith in support of Count One, and direct tippees Goel and Kumar in support of Counts Three and Four. To prove the conduct alleged in Counts Two and Five, the government called neither the intermediary, Roomy Khan or Danielle Chiesi, nor the insiders who purportedly tipped inside information to Khan and Chiesi. Instead the government relied on circumstantial evidence—inferences derived from phone records and records of trading—in proving Count Two (the Khan conspiracy). As to Count Five (the Chiesi conspiracy), the government relied additionally on wiretapped communications.

³ Counts Six through Fourteen charged substantive securities fraud in connection with one or another of the 20 or so trades that were also the subject of the conspiracy Counts. A chart of the Counts, the trades, and the intermediaries, insiders, and value relevant to each trade, is annexed hereto as Exhibit E. This chart was also submitted to the District Court. The Counts and trades at issue in Rajaratnam's habeas and *coram nobis* petitions appear in bold text.

Rajaratnam's defense, in the case of five trades at issue in his post-conviction motions, was that in all but one case (the ICST trade) there was no evidence that he even knew the insider's identity, much less that the insider had received a benefit for making his or her disclosures. *E.g.*, Ex. F (Tr. 5476, 5479, 5483, 5486). In all instances, Rajaratnam had positions and strategies with respect to the shares that pre-dated the purported receipt of inside information. *E.g.*, Ex. F (Tr. 2489-92); GX 42; DX-3416; GX 58; GX 61; GX 64; GX 532-T; DX-1006; DX-1169; DX-4682M. Rajaratnam's holdings and trading actions were consistent with recommendations made by Galleon analysts. *E.g.*, Ex. F (Tr. 5339); DX-45, GX 58; DX-1829. As to each trade, there was information already in the market about the purportedly confidential earnings or acquisition information upon which Rajaratnam purportedly traded. *E.g.*, Ex. F (Tr. 4725-27, 4730-39, 5325, 5335-36).

The government disclaimed throughout the trial the obligation to prove that Rajaratnam knew that insiders had received a personal benefit in exchange for providing confidential information. The government's proposed jury charge rejected any requirement that Rajaratnam knew of any benefit obtained by the insider, and instead instructed that it was sufficient for the jury to find that the insider in fact received a benefit. Ex. G. In summations, the government claimed that it was not required to prove Rajaratnam's knowledge of a benefit received by a remote insider. Ex. F (Tr. 5546) ("[W]ith respect to the stocks subject to the

conspiracy counts, we don't need to prove Mr. Rajaratnam's knowledge of the benefit.").

The District Court agreed, at least in theory, to the defense's request to charge the jury that as to any material, non-public information on which Rajaratnam traded, the government must prove that Rajaratnam knew that "the information . . . had been disclosed by an insider who directly or indirectly obtained some personal benefit from the disclosure." Ex. H (Court's Charge Script). As delivered, however, the instruction was garbled and unclear. The Court instructed: "The government must show that Mr. Rajaratnam knew that the information was material, non-public information that *if* disclosed by an insider *would* directly or indirectly obtain some personal benefit from the disclosure." Ex. F (Tr. 5623) (emphases supplied).

The jury deliberated for 11 days before returning a guilty verdict on all counts.

B. The Sentencing and Forfeiture Judgment

At sentencing, on October 13, 2011, the trial court accepted the government's calculation that the "gain" from the criminal conduct, under U.S.S.G. § 2B1.4, was \$63.8 million, a figure representing the sum of the trading profits realized and losses avoided by the Galleon Group on the trades underlying the Counts of conviction. Ex. I at 26; *see also United States v. Rajaratnam*, No. 09

Cr. 1184 (RJH), 2012 WL 362031, at *2 n.1 (S.D.N.Y. Jan 31, 2012). The District Court imposed a term of incarceration below the guidelines range of 235 to 293 months' imprisonment, but emphasized that the 11-year term was at the "high end" of the range of sentences ever given for "similar" misconduct, and that a harsh penalty was warranted based on the "breadth" and "scope" of the insider trading. Ex. I at 30-31. The District Court credited Rajaratnam's "personal circumstances," including his advanced diabetes and kidney problems. *Id.* at 31-32. A forfeiture judgment was entered in the amount of \$53.8 million—a figure derived from the "gain" figure of \$63.8 million. *Id.* at 26, 29.

On December 11, 2011, Rajaratnam surrendered at FMC Devens. On June 24, 2013, this Court affirmed his convictions on direct appeal. *United States v. Rajaratnam*, 719 F.3d 139 (2d Cir. 2013). On June 16, 2014, the Supreme Court denied Rajaratnam's petition for *certiorari*. *Rajaratnam v. United States*, 134 S. Ct. 2820 (2014). Rajaratnam has served over half of his sentence.

C. The Section 2255 and *Coram Nobis* Proceedings

On June 16, 2015, Rajaratnam filed two post-conviction motions. Dkt. Nos. 351, 354. Based on *Newman*, he argued in a motion for relief under 28 U.S.C. § 2255 that he was factually innocent of Counts Two, Five, Eight, Nine and Ten, and the ICST Trade underlying Count One. In seeking a *coram nobis* writ, Rajaratnam contended that the forfeiture judgment should be amended because it was

predicated in part on non-criminal conduct. The latter motion alternatively sought relief under *United States v. Contorinis*, 692 F.3d 136 (2d Cir. 2012), which held that an insider defendant cannot be ordered to forfeit profits that he never received or possessed. 692 F.3d at 145.

The government filed a single brief opposing both motions. Dkt. No. 360. It did not dispute that if it had failed to adduce proof of Rajaratnam's knowledge of a personal benefit obtained by the remote insiders, Rajaratnam was entitled to habeas relief, irrespective of procedural default on direct appeal. Further, the government did not claim to have presented proof that Rajaratnam was made aware, by any source, of any benefit received by the remote insiders. It argued instead that Rajaratnam had failed to establish his "actual innocence" because the trial proof demonstrated that he was a "sophisticated businessman" who had himself paid for inside information, and the jury was entitled to infer on that basis that he "understood from experience" that "Inside Information came at a price" of "pecuniary-like benefits" conferred upon the remote insiders. *Id.* at 2, 23, 25.

On March 3, 2017, the District Court issued a Memorandum Opinion and Order (the "Order") denying both motions. Ex. A. The District Court found that Rajaratnam's challenge to his conviction on Count Five was unfounded because Rajaratnam had claimed that he was actually innocent of only one of two trades underlying that Count. *Id.* at *5. It also found that Rajaratnam had failed to

demonstrate actual innocence on any Count or trade, even accepting that the proof did not demonstrate his knowledge of any “specific benefits” received by the insiders, or even the identity of the insiders. *Id.* at **5-6. The Court found that because Rajaratnam “either knew where the information was originating from or was providing a benefit to the intermediate tippees,” the jury was entitled to conclude that he also must have known that the insider, remote to him, received a personal benefit in exchange for providing the confidential information. *Id.* at *5. The District Court distinguished *Newman* on the ground that there were three or four levels of “distance between the defendants and the insiders,” whereas Rajaratnam was at most one level removed from the intermediary who provided the benefit to the insider. *Id.* The Order also denied the *coram nobis* application insofar as it relied on *Newman*, and found Rajaratnam’s reliance on *Contorinis* to lack merit. *Id.* at *9.

The District Court’s denial of Rajaratnam’s petition for a *coram nobis* writ has been appealed as of right. *Finkelstein v. Spitzer*, 455 F.3d 131, 132 (2d Cir. 2006) (*per curiam*) (citing *United States v. Baptiste*, 223 F.3d 188, 189 n.1 (3d Cir. 2000)). On May 9, 2017, the District Court denied Rajaratnam’s motion for a COA, stating there had been “overwhelming” and “extensive” evidence supporting an inference that Rajaratnam knew of each insider’s receipt of a personal benefit. Ex. B at 2-3.

ARGUMENT

The Certificate of Appealability Should be Granted

To establish “actual innocence,” a petitioner must demonstrate that “in light of all the evidence, . . . it is more likely than not that no reasonable juror would have convicted him.” *Bousley v United States*, 523 U.S. 614, 623 (1998) (quotation marks omitted). Vacatur is required where factual innocence is demonstrated because if the government “has offered and the record discloses no proof whatever of various elements of the crime charged,” there is “a fatal constitutional taint for lack of due process of law.” *United States v. Loschiavo*, 531 F.2d 659, 666 (2d Cir. 1976).

The question of whether there was evidence sufficient to support a reasonable inference of Rajaratnam’s guilt, as to the challenged Counts and trades, easily merits consideration. The District Court failed to identify direct evidence that Rajaratnam knew that the insiders had received a personal benefit because there was none. The District Court thus relied on inferences—*i.e.*, that corporate insiders do not disclose confidential information without receiving a personal benefit—rejected by the holding in *Newman* that remains binding after *Salmon*. Rajaratnam’s appeal should be heard.

A. Count Two: The Roomy Khan Conspiracy (Polycom, Hilton, and Google Trades)

The three trades underlying Count Two were deemed at sentencing to account for a gain of over \$22 million. Count Two alleged that Roomy Khan, a former Galleon employee, had passed to Rajaratnam information she obtained from three different insiders: (1) from Sunil Bhalla, an executive at Polycom, information that Polycom would announce strong earnings in January 2006; (2) from Deep Shah, a Moody's analyst, information that Hilton would announce being acquired in July 2007; and (3) from Shammara Hussain, an analyst at Market Street Partners, an investor relations consultant to Google, that Google would miss its quarterly earnings target for the second quarter of 2007.

The government called neither Ms. Khan, nor Bhalla, Shah, or Hussain, who were never charged with any crime. Instead it called executives from Polycom, Moody's, and Market Street Partners to establish that Bhalla, Shah, and Hussain had access to confidential information. It relied on records of phone calls between those three and Khan as circumstantial evidence that Khan had received confidential information from each insider. *See, e.g.*, GX 48; GX 57; GX 58; GX 64. The government maintained that the proximity and timing of phone calls and records of trading activity (and in the case of Polycom, text messages between Khan and Rajaratnam) showed that Rajaratnam had traded on the confidential

information Khan had obtained from others and furnished to him. *See, e.g.*, GX 58; GX 60; GX 64; GX 65.

To prove that Shah, Hussain, and Bhalla had received personal benefits from Khan, at a minimum in the form of the satisfaction of making a gift to a friend, *Dirks v. SEC*, 463 U.S. 646, 664 (1983), the government presented evidence that Khan had a close relationship with Shah (GX 47), that Khan had sent a FedEx envelope to Hussain under a false name just after Google missing its earnings target (GX 1406), and that Bhalla had given Khan authority to trade in a Lehman Brothers account in Bhalla's name (GX 1539). It presented no proof, however, Rajaratnam *knew* Khan's source of information for any of these three trades, much less that he knew of Khan's close relationship with Shah, the FedEx envelope she sent to Hussain, or the authority Khan had to trade in Bhalla's account.

The District Court based its decision with respect to Count Two partly on a mistake as to the factual record, and partly on an inference rejected in *Newman*. First, the Order mistakenly states Rajaratnam knew of an insider with Google information, citing page 24 of the government's brief for the proposition that "in July 2007, Khan told Petitioner that he [sic] had learned from an insider that Google was going to announce unexpectedly poor financials." Ex. A at *5. None of the sources in the government's brief (or anywhere else in the record) reference the content of any of the telephone discussions between Khan and Rajaratnam,

however, and thus none demonstrate Rajaratnam's awareness of the existence of even an unnamed insider.⁴ In fact, the most specific information conveyed to Rajaratnam about any of the trades in Count Two, according to the trial proof, was a text message from Khan to Rajaratnam to await "guidance" about Polycom and Rajaratnam's text weeks later thanking Khan for the Polycom "idea." GX 64. Thus the Polycom, Hilton, and Google trades were not ones in which Rajaratnam knew "where the information was originating from." Ex. A at *5.

Second, the District Court reasoned that because Rajaratnam provided a "personal benefit" to Khan, in the form of reciprocal inside information, he "understood that this sort of confidential information is not provided to individuals without exchange of some benefit." *Id.* Based on this reasoning, the District Court held that "the jury had sufficient evidence reasonably to infer that Petitioner knew that inside information [Khan obtained from corporate insiders] was being provided in exchange for a personal benefit." *Id.* This is the same inference this Court found unreasonable in *Newman*. There, the government had argued that because Newman paid his intermediate tipper, Sandeep Goyal, hundreds of thousands of dollars, he must have known that Goyal's contact, the Dell insider,

⁴ The cited materials, Dkt. No. 360 at 24, are a chart of the times and dates of calls between Rajaratnam and Khan, and the content of one text message (GX 58); a chart of Khan's trades in Google shares (GX 59), and the testimony of the founder of Market Street Partners that employee Hussain had access to confidential information about Google (Ex. F (Tr. 3127, 3135-51)).

had also received a personal benefit. Ex. C at *19, *70. *Newman* vacated the convictions, rejecting the premise that inside information is necessarily disclosed for a personal benefit. 773 F.3d at 454 (“the Supreme Court affirmatively rejected the premise that a tipper who discloses confidential information necessarily does so to receive a personal benefit”) (citing *Dirks*, 463 U.S. at 661-62).

Here, as in *Newman*, there was an array of possibilities as to both the source of any confidential information furnished to the defendant by the middleman and, more importantly, the source’s motive. 773 F.3d at 454-55 (even inferences about the “*nature* of the source” cannot permit an inference as to “that source’s improper *motive*”) (emphases in original). The Supreme Court’s decision in *Dirks*, relied upon in *Newman*, provides the example of an insider who disclosed confidential information to an intermediary in acting as a whistleblower, and not to personally benefit. 463 U.S. at 665-66. *Dirks* identifies other disclosures which involve no personal benefit being gained by the insider: intentional disclosures to analysts or disclosures based on the mistaken belief that information is already public. *Id.* at 658-59, 661-62. *Newman* discusses the phenomenon that “analysts at hedge funds routinely estimate [financial] metrics” based on information that companies “routinely leak[]” and “selectively disclose[.]” 773 F.3d at 454-55 (quotation marks omitted). Evidence was likewise presented at Rajaratnam’s trial of leakage

of the purportedly confidential information on which he traded, before he traded. Ex. F (Tr. 4717-19, 4866-90, 5335 and referenced exhibits).

The inference the District Court deemed to salvage the conviction on Count Two—that “this sort of confidential information is not provided to individuals without exchange of some benefit” (Ex. A at *5)—was not an inference the government ever asked the jury to draw, nor a fair inference under *Newman*.

B. Counts Five, Eight, Nine and Ten: The Akamai Trade

The same trades based on confidential information about Akamai Technologies, Inc., and relayed to intermediary Danielle Chiesi by Kieran Taylor, a marketing director at Akamai, are at issue in Counts Five, Eight, Nine, and Ten. Rajaratnam executed Akamai trades from July 25 to 30, 2008.

The government did not call Chiesi as a witness, and it did not call or charge Taylor. Phone records showed that Chiesi had spoken by telephone to Rajaratnam twice on the evening of July 24, 2008, and that in between those calls she had spoken to Taylor. GX 39; GX 532-T. The call that Chiesi had with Rajaratnam after she spoke with Taylor was intercepted. According to the tape, Chiesi reported to Rajaratnam, “Akamai . . . [T]hey’re gonna guide down. I just got a call from my guy. I played him like a finely tuned piano” when “he just called me now.” GX 532-T at 1. Chiesi continued, “I was talking about the family and everything, and then he said, “People think it’s going to go to 25.” *Id.* Trading

records corroborated a statement by Rajaratnam in the intercepted conversation that he was already “short” on Akamai. GX 532-T at 2; GX 42. Over the next six days, he increased that position. GX 42. On July 30, 2008, after Akamai announced that their shares would perform below expectations, and Galleon had gained a little over \$5 million from its trades, Rajaratnam called Chiesi and said, “just wanted to say, thank you.” GX 44; GX 543-T at 1; GX 2562.

The intercepts that provided the only evidence of what was conveyed to Rajaratnam about Taylor failed to establish that Rajaratnam knew that Taylor had received a “personal benefit” within the meaning of *Salman*. The Supreme Court in *Salman* abrogated *Newman*’s definition of “personal benefit,” holding that for an insider to gift trading information to a friend or relative suffices to demonstrate receipt of a “personal benefit,” even in the absence of an additional “objective, consequential” benefit to the insider, because “[t]he tip and trade resemble trading by the insider himself followed by a gift of the profits to the recipient.” *Salman*, 137 S. Ct. at 427-28 (quotation marks omitted). But there was no proof that Rajaratnam knew Taylor’s identity or his relationship with Chiesi before the July 24, 2008 call. During that call, Chiesi conveyed that she had duped her “guy,” by “play[ing] him like a finely-tuned piano,” until he blurted out his information. GX 532-T at 1. This was not a description of Taylor providing confidential

information as a gift, so as to receive a personal benefit akin to trading himself. Instead, the “guy’s” disclosure was inadvertent or unwitting.

The District Court found that Rajaratnam failed to establish “actual innocence” because he “concede[d] in his motion that he knew Taylor had provided this information to Chiesi because of their close friendship.” Ex. A at *5 (citing Dkt. No. 355 (Defense Motion) at 22 (“the clear implication was that [Taylor] had provided that information merely out of friendship”)). Actually, because *Newman* was controlling at the time, Rajaratnam accepted *arguendo* the explanation the government offered in its closing—that Rajaratnam knew the information was provided because of “that friendship.” Ex. F (Tr. 5306). Under *Newman*, which had not yet been modified by *Salman*, that contention was insufficient to support conviction. *Newman*, 773 F.3d at 452.⁵ In responding, moreover, the government notably did not defend the adequacy of its summation argument; instead, it relied on intercepted calls post-dating the Akamai trades by months to establish that Chiesi provided pecuniary-like benefits to Taylor, including inside information, at that later date. Dkt. No. 360 at 7-8, 28-29. The government has never identified any proof, beyond Chiesi’s statement that she had

⁵ The Akamai trades were the sole instance in which the government in summation referenced having proven or undertaken to prove Rajaratnam’s knowledge of the benefit received by a remote insider.

“played” her “guy” like a “finely tuned piano,” as evidence of Rajaratnam’s knowledge of a benefit received by Taylor. *Id.*

The proof did not reasonably support an inference of guilt.

C. The ICST Trade Underlying Count One

The ICST trade, one of multiple trades underlying Count One, resulted in the attribution of a “gain” of \$2.8 million at Rajaratnam’s sentencing.

Adam Smith, a former Galleon employee, testified that a few weeks before a conference in March 2005, he learned from Kamal Ahmed, a Morgan Stanley banker, that ICST was going to be acquired by Integrated Devices Technology. Ex. F (Tr. 2489-94). Smith testified that he conveyed this news, and later the date on which the acquisition would be announced, to Rajaratnam. *Id.* (Tr. 2489-92); GX 2454; GX 2455; GX 2456. Trading records showed that Rajaratnam increased Galleon’s existing position in ICST after a February 10, 2005 call between Smith and Ahmed. Ex. F (Tr. 3448-50); GX 26; GX 27; GX 28; DX-3416.

The government attempted to elicit from Smith that he conferred a personal benefit upon Ahmed in exchange for Ahmed’s disclosure. This effort fell flat when Smith admitted on cross-examination that although he had taken steps like “provid[ing] some introductions” for Ahmed and “thoughts” about the market, none of those steps had been taken or even contemplated in 2005. Ex. F (Tr. 2508); *see id.* (Tr. 2806) (“Q. I am asking you, when you discussed this [inside

information] with Kamal Ahmed in 2005, you did not have an agreement that two years later you would make an introduction for him that would benefit him, right?

A. No. I had not offered him any benefit for that information that he gave me at that time.”).⁶ But in any event, the government made no effort to elicit testimony, from Smith or anyone else, that Rajaratnam was aware that Ahmed had received any benefit for disclosing ICST information.

In ruling that Rajaratnam had failed to demonstrate his actual innocence as to the ICST trade, the District Court identified no evidence of knowledge. Instead, the Order appears to adopt reasoning that because Rajaratnam was aware that Smith and Ahmed had exchanged material, non-public information, and Smith and Ahmed were in fact in a “close relationship” at the time of the ICST trade, there was sufficient proof that Rajaratnam was aware of a personal benefit received by Ahmed. Ex. A at *5. The District Court stated that “[b]ecause Petitioner had knowledge of the exchange of non-public information between Smith and Ahmed, Petitioner cannot establish actual innocence” *Id.*

This chain of logic fails to identify any evidence showing that Rajaratnam was *aware* of a “close relationship” between Smith and Ahmed in 2005, nor did the government ever claim at trial that there was such awareness. The inferential leap found reasonable by the District Court is again one disallowed by *Newman*.

⁶ Ahmed was never charged with wrongdoing.

CONCLUSION

The motion for a certificate of appealability should be granted.

DATED: June 6, 2017

Respectfully submitted,

QUINN EMANUEL URQUHART
& SULLIVAN, LLP

By: /s/ Christine H. Chung

Christine H. Chung
Adam M. Abensohn
51 Madison Avenue, 22nd Floor
New York, New York 10010
(212) 849-7000

Samidh Guha
JONES DAY
250 Vesey Street
New York, NY 10281-1047
(212) 326-3939

*Attorneys for Plaintiff-Appellant Raj
Rajaratnam*

CERTIFICATE OF COMPLIANCE WITH FRAP 27(d)

1. This brief complies with the type-volume requirements of Local Rule 27.1(a)(3) and Fed. R. App. P. 27(d)(2), because it contains 4,860 words, excluding the parts of the brief exempted by Fed. R. App. P. 27(a)(2)(B).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in proportionately spaced typeface using Microsoft Word 2013 in 14 pt Times New Roman font.

/s/ Christine H. Chung
Attorney for Plaintiff-Appellant

June 6, 2017
Date

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

RAJ RAJARATNAM, <i>Plaintiff-Appellant,</i> v. UNITED STATES OF AMERICA, <i>Defendant-Appellee.</i>	Nos. 17-1405(L), 17-1411(Con) DECLARATION OF CHRISTINE H. CHUNG IN SUPPORT OF THE MOTION OF RAJ RAJARATNAM FOR A CERTIFICATE OF APPEALABILITY
---	---

CHRISTINE H. CHUNG, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am an attorney admitted to practice law in the State of New York and before this Court. I am a member of the law firm Quinn Emanuel Urquhart & Sullivan, LLP, counsel for Plaintiff-Appellant Raj Rajaratnam on appeal.
2. I submit this declaration in support of Mr. Rajaratnam's motion pursuant to 28 U.S.C. § 2253(c) for a Certificate of Appealability (the "Motion").
3. Attached as Exhibit A to this declaration is a true and correct copy of the Westlaw-published version of the March 3, 2017 Memorandum Opinion and Order denying Plaintiff-Appellant Raj Rajaratnam's Motion Pursuant to 28 U.S.C. § 2255 to Vacate Convictions and Sentence (the "Section 2255 Motion"). The Westlaw citation is *Rajaratnam v. United States*, No. 15 Civ. 5325 (LAP), 2017

WL 887027, at *1 (S.D.N.Y. Mar. 3, 2017).

4. Attached as Exhibit B to this declaration is a true and correct copy of the May 9, 2017 Order denying Plaintiff-Appellant Raj Rajaratnam's Motion for a Certificate of Appealability.

5. Attached as Exhibit C to this declaration is a true and correct copy of the Westlaw-published version of the brief for the United States of America in the appeal *United States v. Horvath (Newman)*, Nos. 13-1837(L), 13-1917(Con) (2d Cir.), dated November 14, 2013. The Westlaw citation is 2013 WL 6163307 (2d Cir. Nov. 14, 2013).

6. Attached as Exhibit D to this declaration is a true and correct copy of the Second Superseding Indictment, filed on January 20, 2011.

7. Attached as Exhibit E to this declaration is a chart of the Counts of conviction and associated trades, and the intermediaries, insiders, and value relevant to each trade. This chart was annexed to the reply brief filed by Mr. Rajaratnam in the District Court in support of his Section 2255 Motion. The reply brief was filed as No. 365 of the District Court docket, No. 09 Cr. 1184 (S.D.N.Y.).

8. Attached as Exhibit F to this declaration is a true and correct copy of excerpts from the trial transcript. The trial transcript was also filed as Nos. 273, 285-294 of the District Court docket.

9. Attached as Exhibit G to this declaration is a true and correct copy of Request No. 21 of the Government's Requests to Charge, filed on February 2, 2011, as No. 187 of the District Court docket.

10. Attached as Exhibit H to this declaration is a true and correct copy of Instruction 31-C of the Court's Charge Script, dated April 25, 2011.

11. Attached as Exhibit I to this declaration is a true and correct copy of the transcript of Mr. Rajaratnam's sentencing on October 13, 2011.

12. The Government Exhibits and Defense Exhibits listed below, in paragraphs 13 to 41, were admitted at Mr. Rajaratnam's trial and are cited in the Motion. To avoid a need to cross-reference, these exhibits are annexed hereto using the GX and DX numbers assigned at trial.

13. Attached hereto is a true and correct copy of Government Exhibit 26, a chart entitled "Certain Communications in February 2005," relating to the dates and times of phone calls between Adam Smith and Kamal Ahmed.

14. Attached hereto is a true and correct copy of Government Exhibit 27, a chart entitled "Galleon Tech Daily Closing Position in Integrated Circuit System Stock (ICST), February 1, 2005 Through June 30, 2005."

15. Attached hereto is a true and correct copy of Government Exhibit 28, a chart entitled "Galleon Tech Profit on Stock in Integrated Circuit Systems (ICST) Held at Time of its Acquisition by Integrated Device Technology."

16. Attached hereto is a true and correct copy of Government Exhibit 39, a chart entitled “Certain Communications On July 24, 2008,” relating to the dates and times of phone calls between Danielle Chiesi and Raj Rajaratnam and between Danielle Chiesi and Kieran Taylor.

17. Attached hereto is a true and correct copy of Government Exhibit 42, a chart entitled “Galleon Tech Daily Closing Position in Akamai Stock (AKAM) from June 1, 2008 Through July 30, 2008.”

18. Attached hereto is a true and correct copy of Government Exhibit 44, a chart entitled “Galleon Tech Profit From Trades in Akamai Securities Beginning on July 25, 2008.”

19. Attached hereto is a true and correct copy of Government Exhibit 47, a chart entitled “Telephone Communications Between Roomy Khan and Deep Shah, January 2007 through July 2007.”

20. Attached hereto is a true and correct copy of Government Exhibit 48, a chart entitled “Certain Communications On July 2, 2007,” relating to the dates and times of phone calls between Roomy Khan and Deep Shah and between Roomy Khan and Raj Rajaratnam.

21. Attached hereto is a true and correct copy of Government Exhibit 57, a chart entitled “Telephone Communications Between Roomy Khan and Shammara Hussain, January 2007 Through July 2007.”

22. Attached hereto is a true and correct copy of Government Exhibit 58, a chart entitled “Certain Communications From July 5, 2007 Through July 19, 2007,” relating to the dates and times of phone calls between Roomy Khan and Shammara Hussain and between Roomy Khan and Raj Rajaratnam.

23. Attached hereto is a true and correct copy of Government Exhibit 59, a chart entitled “Roomy Khan Trading in Google Securities from July 13, 2007 Through July 20, 2007.”

24. Attached hereto is a true and correct copy of Government Exhibit 60, a chart entitled “Galleon Tech and Diversified Trading in Google Securities From July 13, 2007 Through July 20, 2007.”

25. Attached hereto is a true and correct copy of Government Exhibit 61, a chart entitled “Galleon Tech and Diversified Daily Closing Position in Google Stock (GOOG), May 1, 2007 Through July 27, 2007.”

26. Attached hereto is a true and correct copy of Government Exhibit 64, a chart entitled “Certain Communications in January 2006,” relating to the dates and times of phone calls between Roomy Khan and Sunil Bhalla and between Roomy Khan and Raj Rajaratnam and text messages sent or received by Raj Rajaratnam.

27. Attached hereto is a true and correct copy of Government Exhibit 65, a chart entitled “Galleon Tech Trading in Polycom Stock (PLCM) From January 10 to January 25, 2006.”

28. Attached hereto is a true and correct copy of Government Exhibit 532-T, a transcript of a wiretapped phone call between Mr. Rajaratnam and Danielle Chiesi, dated July 24, 2008.

29. Attached hereto is a true and correct copy of Government Exhibit 543-T, a transcript of a wiretapped phone call between Mr. Rajaratnam and Danielle Chiesi, dated July 30, 2008.

30. Attached hereto is a true and correct copy of Government Exhibit 1406, FedEx Invoice Number 2-211-55458, Account Number 2412-0107-4, dated August 17, 2007.

31. Attached hereto is a true and correct copy of Government Exhibit 1539, the Lehman Brothers Security Account Limited Discretionary Authorization for Roomy Khan, signed by Sunil Bhalla.

32. Attached hereto is a true and correct copy of Government Exhibit 2454, an email from Adam Smith to Mr. Rajaratnam with the subject line “The two eyes,” dated March 9, 2005.

33. Attached hereto is a true and correct copy of Government Exhibit 2455, an email from Adam Smith to Mr. Rajaratnam with the subject line “Eyes,” dated March 17, 2005.

34. Attached hereto is a true and correct copy of Government Exhibit 2456, an email from Adam Smith to Mr. Rajaratnam with the subject line “eyes,” dated April 21, 2005.

35. Attached hereto is a true and correct copy of Government Exhibit 2562, the final transcript of the Akamai Technologies Inc. Earnings Conference Call for the second quarter of 2008, dated July 30, 2008.

36. Attached hereto is a true and correct copy of Defense Exhibit 45, an email from Eric Rothdeutsch of Galleon to the Tech and Trading Group of Galleon with the subject line “ICST Update,” dated February 10, 2005.

37. Attached hereto is a true and correct copy of Defense Exhibit 1006, a Form 13F filed by Galleon Management, L.P., with the U.S. Securities and Exchange Commission, dated March 31, 2007, and indicating Galleon holdings in Hilton.

38. Attached hereto is a true and correct copy of Defense Exhibit 1169, a Form 13F filed by Galleon Management, L.P., with the U.S. Securities and Exchange Commission, dated June 30, 2007, and indicating Galleon holdings in Hilton.

39. Attached hereto is a true and correct copy of Defense Exhibit 1829, an email from Jessica Kourakos to Portfolio@galleongrp.com with the subject line “Sell short 75,000 AKAM,” dated May 6, 2008.

40. Attached hereto is a true and correct copy of Defense Exhibit 3416, ICST Trading Data from the Galleon OMS Database.

41. Attached hereto is a true and correct copy of Defense Exhibit 4682M, a chart entitled “Transaction in Polycom Stock by Raj Rajaratnam for Galleon on December 21, 2005.”

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
June 6, 2017

/s/ Christine H. Chung
Christine H. Chung

Exhibit A

2017 WL 887027

Only the Westlaw citation is currently available.

United States District Court,
S.D. New York.

Raj RAJARATNAM, Petitioner,

v.

UNITED STATES of America, Respondent.

15 Civ. 5325 (LAP)

|

Related To: 09 Cr. 1184 (LAP)

|

Filed 03/03/2017

Attorneys and Law FirmsChristine H. Chung, Quinn Emanuel, New York, NY, for
Petitioner.Michael Ferrara, Jennifer Lane Gachiri, United States
Attorney's Office, New York, NY, for Respondent.**Memorandum Opinion and Order**LORETTA A. PRESKA, Senior United States District
Judge

*1 Before the Court is a motion to correct, vacate, and/or set aside the sentence pursuant to Title 28, United States Code, Section 2255, (Mot. Vacate, June 16, 2015, dkt. no. 354), and a motion for a writ of error coram nobis to vacate, reassess, and amend the order of forfeiture, (Mot. Writ of Error, June 16, 2015, dkt. no. 351), filed by Petitioner Raj Rajaratnam ("Petitioner" or "Rajaratnam"). The Government filed an omnibus memorandum in opposition to both of Petitioner's motions. (Opp., Oct. 5, 2015, dkt. no. 360). Petitioner replied, filing both a reply memorandum pursuant to 28 U.S.C. § 2255, (Reply Mot. Vacate, Nov. 6, 2015, dkt. no. 365), and a reply memorandum for a writ of error coram nobis. (Reply Mot. Writ of Error, Nov. 6, 2015, dkt. no. 364). Subsequent correspondence was filed to address Salman v. United States, 137 S.Ct. 420 (2016), a recent Supreme Court decision that is relevant to Petitioner's arguments in his § 2255 petition. (See dkt. nos. 368-372).

For reasons that follow, Petitioner's motions are denied.

I. BACKGROUND

On March 8, 2011, the Petitioner's trial commenced before Judge Richard Holwell. Petitioner was charged in a Superseding Indictment in fourteen counts. (Superseding Indictment, Jan. 20, 2011, dkt. no. 165). Counts One to Five charged Petitioner with conspiracies to commit securities fraud, with each conspiracy defined by the individual who allegedly passed the information to Petitioner. (*Id.* at ¶¶ 1-35). Counts Six through Fourteen charged Petitioner with substantive securities fraud in connection with some of the individual trades that were also the subjects of the conspiracy counts. (*Id.* at ¶¶ 36-41). The counts included: (1) leading a multi-year conspiracy with former and current employees of Galleon, including Adam Smith, to trade based on illegal tips from multiple insiders at public companies, (Count One)(*id.* at ¶¶ 1-7); (2) leading a multi-year conspiracy with Roomy Khan, a former Galleon employee, and exchanging illegal tips with Khan related to multiple stocks, including Polycom Inc. ("Polycom"), Hilton Hotel Corp. ("Hilton"), and Google Inc. ("Google"), (Count Two) (*id.* at ¶¶ 8-14); (3) leading a multi-year conspiracy with Rajiv Goel, an Intel Corp. ("Intel") executive, and trading based on illegal tips from Goel about Intel and Clearwire Corp. ("Clearwire"), (Counts Three, Six, Seven, & Fourteen) (*id.* at ¶¶ 15-21, 36-37, 40-41); (4) leading a multi-year conspiracy with Anil Kumar, a senior partner at McKinsey & Company, Inc. ("McKinsey"), and trading based on illegal tips from Kumar about Advanced Micro Devices, Inc. ("AMD"), ATI Technologies Inc. ("ATI"), and eBay Inc. ("eBay"), (Counts Four & Thirteen)(*id.* at ¶¶ 22-28, 38-39); (5) conspiring with Danielle Chiesi, a portfolio manager at another hedge fund, and exchanging illegal tips with Chiesi relating to AMD, Akamai Technologies, Inc. ("Akamai"), and other companies, (Counts Five, Eight, Nine & Ten)(*id.* at ¶¶ 29-37); and trading based on material, non-public information he obtained from a source at PeopleSupport, (Counts Eleven and Twelve). (*Id.* at ¶¶ 36-37).

*2 At trial, the Government offered physical and testimonial evidence as to Petitioner's guilt, including: (1) wiretap recordings of Petitioner's phone conversation with Kumar, Goel, Smith, Chiesi, and others demonstrating that Petitioner schemed repeatedly to obtain and to trade based on inside information, (Opp. at 4); (2) testimony from Kumar regarding his agreement to provide Petitioner with multiple illegal tips, including

tips related to AMD's acquisition of ATI in 2006, and Petitioner's elaborate schemes to conceal the bribes he paid to Kumar for those tips, (*id.*); (3) testimony from Goel regarding his agreement to provide Petitioner with multiple illegal tips relating to Intel's April 2007 earnings and Intel's 2008 investment in Clearwire, (*id.*); (4) testimony from Smith regarding his agreement to share inside information with individuals at Galleon including Petitioner and Petitioner's directives to conceal their crimes, (*id.*); (5) testimony from various executives at public companies and other firms relating to the confidentiality of the information Petitioner obtained from many sources, (*id.*); and (6) summary charts reflecting Petitioner's phone calls with sources of inside information and the extensive trading by Petitioner and others based on that information. (*Id.*)

On May 11, 2011, the jury found Petitioner guilty on all fourteen counts. (Rajaratnam Trial Tr., May 11, 2011, at 5712-13). On October 13, 2011, Judge Holwell sentenced Petitioner to a term of 132 months imprisonment, to be followed by two years of supervised release. (Judgment, Oct. 25, 2011, dkt. no. 328). Judge Holwell also ordered Petitioner to pay a fine of \$10 million, a \$1,400 special assessment, and forfeiture in the amount of \$53, 816, 434. (*Id.*)

On appeal, Petitioner advanced two arguments: first, Petitioner argued that the wiretaps capturing his illegal schemes should have been suppressed because the Government included material falsehoods or omissions in the relevant applications. (Appeal Br. at 33, 11-4416, dkt. no. 75). Second, Petitioner challenged Judge Holwell's instruction to the jury that it could convict Rajaratnam if the inside information was "a factor, however small," in his trading decisions. (*Id.* at 56). Petitioner concedes that appellate counsel "did not challenge the trial court's instruction on 'knowledge' and 'benefit' or the sufficiency of the evidence of 'knowledge' or 'benefit.'" (Mot. Vacate at 12). The Court of Appeals affirmed Rajaratnam's convictions by opinion dated June 24, 2013. United States v. Rajaratnam, 719 F.3d 139 (2d Cir. 2013).

II. Discussion

A. § 2255 Habeas Petition

i. Legal Standard

It is well settled that a § 2255 petition is not a substitute for a direct appeal. United States v. Frady, 456 U.S. 152, 165 (1982); United States v. Vilar, 645 F.3d 543, 548 (2d Cir. 2011). A federal prisoner cannot use a § 2255 petition to litigate questions that could have been raised on direct appeal but were not. Sapia v. United States, 433 F.3d 212, 217 (2d Cir. 2005). Society's interest in repose of criminal judgments animates these procedural rules and compels their vigorous enforcement. See, e.g., Harrington v. Richter, 562 U.S. 86, 103 (2011) (discussing repose in the context of petitions for habeas corpus from state prisoners). Thus, where a petitioner has procedurally defaulted a claim by failing to raise it at a trial, sentencing, or on direct appeal, the claim may be raised through § 2255 only if petitioner "can first demonstrate either cause and actual prejudice, or that he is actually innocent." Bousley v. United States, 523 U.S. 614, 622 (1998) (internal quotations and citations omitted).

The Supreme Court has instructed that "cause" should be construed narrowly. See Coleman v. Thompson, 501 U.S. 722, 752 (1991) (noting that "cause" arises only when it is "something external to the petitioner" which "cannot be fairly attributed to him"). Where a petitioner argues that the "cause" for the procedural default was a result of ineffective assistance of counsel, the petitioner must demonstrate that (1) counsel's representation fell below an objective standard of reasonableness and (2) there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different. Strickland v. Washington, 466 U.S. 668, 688, 694 (1984); United States v. Whitman, 115 F.Supp.3d 439, 445 (S.D.N.Y. 2015). Ineffective assistance of counsel claims include both the "cause" and "prejudice" prongs because the Strickland standard also requires a showing of prejudice.

*3 Habeas courts must "indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Strickland, 466 U.S. at 689. In reviewing allegations of deficient performance by appellate counsel, reviewing courts are instructed not to "second-guess reasonable professional judgments and impose on ... counsel a duty to raise every colorable claim" on appeal. Jones v. Barnes, 463 U.S. 745, 754 (1983) (internal quotation omitted). When analyzing the objective reasonableness of counsel's performance, such performance "must be assessed in light of the information known at the time of the decisions, not in

hindsight.” Strickland, 466 U.S. at 680. Additionally, in attempting to demonstrate constitutional ineffectiveness by appellate counsel, “it is not sufficient for the habeas petitioner to show merely that counsel omitted a nonfrivolous argument, for counsel does not have a duty to advance every nonfrivolous argument that could be made.” Mayo v. Henderson, 13 F.3d 528, 533 (2d Cir. 1994). Instead, a habeas petitioner must establish that appellate counsel “omitted significant and obvious issues while pursuing issues that were clearly and significantly weaker.” Id. “Strategic choices” made by appellate counsel “after thorough investigation of law and facts relevant to plausible options” are “virtually unchallengeable.” Strickland, 466 U.S. at 690-91.

In the event a petitioner cannot demonstrate “cause” for his procedural default, he or she can obtain review for his or her claim by showing “that a fundamental miscarriage of justice would result from a failure to entertain the claim.” McCleskey v. Zant, 499 U.S. 467, 494-95 (1991). The Supreme Court has repeatedly emphasized that a “fundamental miscarriage of justice” results only when petitioner can establish “actual innocence.” See Herrera v. Collins, 506 U.S. 390, 404 (1993) (referring to rule requiring “proper showing of actual innocence” as the “fundamental miscarriage of justice exception” and explaining the purpose of the exception is “to see that federal constitutional errors do not result in the incarceration of innocent persons”).

Furthermore, “ ‘actual innocence’ means factual innocence, not mere legal insufficiency.” Bousley, 523 U.S. at 623. Accordingly, this narrow test is satisfied only when petitioner can demonstrate that his acts “have been ruled not to constitute criminal conduct.” Underwood v. United States, 166 F.3d 84, 88 (2d Cir. 1999).

ii. Discussion

a. Ineffective Assistance of Counsel

Here, Petitioner cannot demonstrate ineffective assistance of counsel because there were no “objective factor[s] external” to the defendant that would have prevented him from raising his claims on direct appeal. See Coleman, 501 U.S. at 752 (noting that “ ‘cause’ under the cause and prejudice test must be something *external* to the petitioner”)(emphasis in original). Further, Petitioner fails

to show that he has suffered prejudice as a result of counsel's alleged error.

Petitioner argues that the jury instructions omitted the requirement that “the government must prove a remote tippee's knowledge of the benefit received by the insider, and that the benefit be more than the mere satisfaction of friendship.” (Mot. Vacate at 26). Petitioner notes that trial counsel recognized the importance of the Government's burden to prove both “knowledge” and “benefit” as they submitted draft jury charges containing these requirements. (Id.) However, Petitioner contends that it was “objectively unreasonable” for trial counsel to abandon this issue in the jury charge, thereby failing to describe accurately the Government's burden, as was appellate counsel's failure to raise this issue on appeal. See id. (“[C]ounsel anticipated Newman... however, counsel failed to object to the charge as read” and “failed to object on direct appeal.”).

The Court is unpersuaded. Counsel need not advance every non-frivolous argument in order to perform at an objective standard of reasonableness. See Mayo, 13 F.3d at 533. The record demonstrates that Petitioner's appellate counsel did advance several reasonable arguments and exercised reasonable judgment when doing so. The Court finds that the decision to advance the arguments that (1) the wiretap evidence should be suppressed and that (2) the jury was mistakenly instructed that they could convict if the inside information was “a factor, however small”, (Appeal Br. at 33, 56, 11-4416, dkt. no. 75), was not unreasonable. The Petitioner advances no argument that these claims were any less significant or weaker than the claim that the jury instructions contained an error regarding personal benefit or knowledge. See Mayo, 13 F.3d at 533 (requiring a showing that ignored issues are clearly stronger than those presented to overcome presumption of effective counsel). Moreover, Petitioner does not show how “his appellate counsel's choice not to appeal the Court's instruction on personal benefit fell below an objective standard of reasonableness.” See Whitman, 115 F.Supp. at 445 (denying § 2255 motion raising Newman claims when there is no showing by Petitioner as to why it was “objectively unreasonable” for counsel to raise certain claims but not others on appeal). Accordingly, the Petitioner has failed to overcome the strong presumption of effective assistance by counsel.

*4 Further, even if Petitioner had sufficiently demonstrated that counsel's representation fell below an objective standard of reasonableness, Petitioner has not shown that he suffered prejudice because of counsel's failure to raise this issue. Petitioner must show that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland, 466 U.S. at 694. However, had Petitioner's counsel appealed Judge Holwell's jury instructions for failing to provide different instructions regarding knowledge of benefit, and had the Court of Appeals decided that knowledge of benefit was required to convict, that decision would not have resulted in a reversal of the challenged counts. Substantial evidence was introduced at trial showing that the Petitioner knew that insiders were receiving a benefit in exchange for confidential information. (See Opp. at 7-10, 24-25, 28-29, 30-32; see also, *infra* at 14-17). The Court therefore finds that any error in the jury instructions was harmless because such an error would not have had a "substantial and injurious effect or influence in determining the jury's verdict." Brecht v. Abrahamson, 507 U.S. 619, 623 (1993); see also Neder v. United States, 527 U.S. 1, 18-20 (1999). Accordingly, Petitioner did not suffer prejudice as a result of counsel's alleged error.

Thus, Petitioner's claim on the basis of ineffective assistance of counsel is denied.

b. Actual Innocence

Petitioner's argument on the basis of the actual innocence standard also fails. Petitioner challenges his convictions on Counts Two, Five, Eight, Nine, Ten, and the ICST trade underlying Count One—namely, the Counts in which he did not personally provide benefits to insiders—on the grounds that "there is no evidence [Petitioner] knew that he received information provided by corporate insiders in exchange for a benefit, as Newman defined it." (Mot. Vacate at 25).

As an initial matter, the Supreme Court recently revisited the issue of what constitutes the requisite benefit in insider trading in Salman v. United States, holding that a benefit does not need to be pecuniary in nature but rather that a sufficient benefit is conferred when "an insider makes a gift of confidential information to a trading relative or friend." 137 S.Ct. at 427. Here, because all the information

was transferred between trading relatives or friends, the mere transfer of information is sufficient to constitute a benefit. Accordingly, even if pecuniary benefits were not provided to the tippees, the record still demonstrates that a sufficient benefit was provided to each of the insiders in exchange for his or her provision of confidential information. Therefore, Petitioner must demonstrate that he did not have the requisite knowledge in order to prevail on his claim of actual innocence.

In Unites States v. Newman, the Court held that to satisfy the knowledge element in an insider trading case the tippee must know that the insider disclosed confidential information in exchange for personal benefit. 773 F.3d 438 (2d Cir. 2014). In Newman, the defendants Todd Newman and Anthony Chiasson were charged with securities fraud for executing trades in Dell and NVIDIA stock and ultimately receiving profits of \$4 million and \$68 million for their respective funds. *Id.* at 443. Both individuals did not receive information directly from the corporate insider but rather were several steps removed from the corporate insiders. *Id.* With respect to the Dell tipping chain, Rob Ray, a member of Dell's investor relations department and the corporate insider in this tipping chain, tipped Sandy Goyal, who in turn provided this information to Jesse Tortora, who in turn provided this information to Newman as well as to Spyridon Adondakis, who in turn provided this information to Chiasson. *Id.* As such, in the Dell chain, Newman was three levels removed from the insider, and Chiasson was four levels removed. *Id.* With respect to the NVIDIA tipping chain, the evidence established that the insider, Chris Choi, a member of NVIDIA's finance unit, tipped Hyung Lim, who in turn tipped Danny Kuo, who circulated this information to Tortora and Adondakis, who in turn gave this information to Newman and Chiasson. *Id.* As such, both individual were four levels removed from the insider in this tipping chain. *Id.* Because there was no evidence that either Newman or Chiasson was aware that he or she was trading on information obtained from insiders or that the insiders received a benefit in exchange for the disclosures, the Court of Appeals reversed their convictions. *Id.* at 453.

*5 Here, Petitioner was situated very differently from either Newman or Chiasson because he either directly provided the benefit or was one level removed from the individual who provided the benefit. Moreover, in the instances where Petitioner was one level removed

from the insider, he either knew where the information was originating from or was providing a benefit to the intermediate tippees. The Court therefore finds that unlike Newman, where knowledge could not be inferred given the distance between the defendants and the insiders, here a reasonable jury could infer that Petitioner did have knowledge that the insiders disclosed confidential information in exchange for a benefit.

Specifically, as to Count Two, Petitioner received information from Khan in 2006 and 2007. (Superseding Indictment at ¶¶ 8-12). Khan had received this inside information from Bhalla, a Polycom executive, Deep Shah, a Moody's analyst, and Hussain, a marketing firm analyst for Google. (Opp. at 24). In July 2007, Khan told Petitioner that he had learned from an insider that Google was going to announce unexpectedly poor financials. (*Id.*) Petitioner traded on this information and earned millions in profits when Google announced its second quarter profits. (*Id.*) That same day, a FedEx envelope was sent from Khan's work address, using Khan's FedEx account, to Hussain. (*Id.* at 24-25). Additionally, with respect to these chains, Petitioner provided Khan with a benefit in the form of material non-public information. (*Id.* at 25-26). This benefit provided by Petitioner to Khan, the intermediate tippee, provides further evidence that Petitioner understood that this sort of confidential information is not provided to individuals without exchange of some benefit. Therefore, although Petitioner may not have known of the specific benefits that Khan provided to the inside tipper, the jury had sufficient evidence reasonably to infer that Petitioner knew that inside information was being provided in exchange for a personal benefit. Accordingly, Petitioner cannot prove actual innocence, which requires a showing of factual innocence, not "mere legal insufficiency." Bousley, 523 U.S. at 623.

Count Five includes both the Chiesi conspiracy as well as Petitioner's direct receipt of information from Kumar related to AMD. (Superseding Indictment at ¶ 31). Petitioner directly provided a benefit to Kumar. (See Opp. at 4-5) (Petitioner "wired money to Kumar's offshore account.... In return, Kumar repeatedly provided [Petitioner] with confidential information."). Accordingly, Petitioner had knowledge of inside information being provided in exchange for a personal benefit with respect to this Count and cannot establish actual innocence.

With respect to Counts Five, Eight, Nine, and Ten, the Government presented evidence that Chiesi provided benefits to Kieran Taylor, who in exchange gave inside information to Chiesi. As explained above, providing information to a trading relative or friend is sufficient to constitute a personal benefit. See Salman, 137 S.Ct. at 427. Petitioner concedes in his motion that he knew Taylor had provided this information to Chiesi because of their close friendship. (Mot. Vacate at 22, "the clear implication was [Taylor] had provided that information merely out of friendship.") Accordingly, he cannot now claim that he did not have the requisite knowledge that confidential information was being provided by an insider in exchange for a personal benefit.

With respect to the ICST trade underlying Count One, Petitioner also fails to prove actual innocence. Petitioner received information from Smith, a Galleon employee, who was receiving information from Kamal Ahmed, a former colleague of Smith's at Morgan Stanley. (Opp. at 30). Ahmed told Smith that a company was in the process of acquiring ICST. (*Id.*) Smith then passed this information to Petitioner and informed Petitioner that it came from Ahmed. (*Id.* at 30-31). The use of coded language between Smith and Petitioner when discussing this deal makes it clear that they knew this information was nonpublic and should not have been disclosed to them. (*Id.* at 31). Conferral of a personal benefit in exchange for this inside information is evident because Smith provided Ahmed with thoughts about the marketplace and stocks, introduced Ahmed to individuals he requested, and recommended him to executives at technology companies. (*Id.* at 31-32). Moreover, the mere provision of inside information from Ahmed to Smith was sufficient to establish the requisite personal benefit given the nature of their close relationship. See Salman, 137 S.Ct. at 427. Because Petitioner had knowledge of the exchange of nonpublic information between Smith and Ahmed, Petitioner cannot establish actual innocence with respect to this trade either.

*6 Because there was an exchange of personal benefit on each of these trades, and because Petitioner had knowledge that inside information was being conferred in exchange for such benefit, the Court denies Petitioner's claim of actual innocence on all of the foregoing counts.

B. Vacatur for Perjured Testimony

i. Legal Standard

“[A] petitioner is not entitled to a new trial based on a claim of perjury, unless he ‘first demonstrate[s] that the witness in fact committed perjury.’ ” United States v. Reeves, Nos. 02 Civ. 9309 (LAP) & 96 Cr. 325 (LAP), 2005 WL 3288012, at *9 (S.D.N.Y. Dec 2, 2005)(quoting United States v. Monteleone, 257 F.3d 210, 219 (2d Cir. 2001)). The movant bears the burden to prove perjury by a preponderance of the evidence. United States v. Sessa, Nos. 92-CR-351(ARR) & 97-CV-2079(ARR), 2011 WL 256330, at *44 (E.D.N.Y. Jan. 25, 2011). “Simple inaccuracies or inconsistencies” arising from “confusion, mistake, or faulty memory ... do not rise to the level of perjury.” Id. “[E]ven a direct conflict in testimony does not in itself constitute perjury.” United States v. Gambino, 59 F.3d 353, 365 (2d Cir. 1995). Rather, a witness perjures himself by adducing “false testimony concerning a material matter with the willful intent to provide false testimony.” Monteleone, 257 F.3d at 219.

“ [A] new trial is not foreordained” whenever a petitioner satisfies his initial burden. Id. Instead, in evaluating whether perjurious testimony warrants a new trial, courts in this circuit apply two, discrete standards of review set forth in United States v. Wallach, 935 F.2d. 445 (2d Cir. 1991). “Where the prosecution knew or should have known of the perjury, the conviction must be set aside if there is any reasonable likelihood that the false testimony could have affected the jury's judgment.” Id. at 456. However, “[w]here the government was unaware of a witness[s] perjury ... a new trial is warranted only if the testimony was material and the court is left with a firm belief that but for the perjured testimony, the defendant would most likely not have been convicted.” Id. The test for determining the materiality of the testimony is “whether there was a significant chance that this added item, developed by skilled counsel ... could have induced a reasonable doubt in the minds of enough jurors to avoid a conviction.” United States v. Seijo, 514 F.2d 1357, 1364 (2d Cir. 1975) (citations omitted).

In the alternative, a Court must hold a hearing pursuant to Section 2255 “unless the motion ... conclusively show[s] that the prisoner is entitled to no relief.” 28 U.S.C. § 2255(b). The Court of Appeals has instructed that “to prevail on his motion for a hearing [Petitioner] must establish that he has a ‘plausible’ claim.” Armienti v.

United States, 234 F.3d 820 (2d Cir. 2000). Further, “[a]n evidentiary hearing is necessary only when petitioner establishes a ‘plausible claim’ of perjury—one not plainly disproved by the totality of evidence and that, if true, would entitle him to collateral relief.” Brandon v. United States, No. 09 Civ. 7720 (JGK), 2011 WL 4801362, at *3 (S.D.N.Y. Oct. 11, 2011)(quoting Florez v. United States, No. 07 Civ. 4965, 2009 WL 2228121, at *11 (E.D.N.Y. July 24, 2009)).

ii. Discussion

Petitioner argues that Counts Four and Thirteen, which concern Petitioner's trading securities based on inside information related to AMD, ATI, and eBay, should be vacated because Kumar perjured himself at trial. (Mot. Vacate at 27). However, Petitioner has failed to meet his initial burden to show that Kumar's testimony rose to the level of perjury, see Reeves, 2005 WL 3288012, at *9, or that the allegedly false testimony concerned a “material matter.” Monteleone, 257 F.3d at 219.

*7 Prior to testifying as a witness at Petitioner's trial, Kumar met with the Government to prepare for his testimony. (Opp. at 36). However, more than three years later, Kumar refused to be prepared by the Government in advance of testifying at Rengan Rajaratnam's trial regarding similar conduct. Id. It is not surprising to the Court that, years later, without having his recollection refreshed with documents and recordings immediately prior to trial, Kumar's memory faltered and his testimony differed in certain respects concerning events that occurred nearly a decade prior. However, a faulty memory resulting in inaccuracies or mistakes does not prove that Kumar provided false testimony with the intent to provide false testimony during Petitioner's trial. See Sessa, 2011 WL 256330, at *44 (noting that mere inaccuracies do not rise to the level of perjury); Monteleone, 257 F.3d at 219. Accordingly, Petitioner has failed to show that Kumar committed perjury.

The Court is further persuaded that Petitioner did not meet his initial burden of showing perjury because the allegedly contradictory testimony did not concern matters material to Petitioner's conviction on Counts Four and Thirteen. See Monteleone, 257 F.3d at 219. Petitioner points out several inconsistent statements made by Kumar between Petitioner's trial and his brother Rengan's trial.

(See Reply Mot. Vacate at 19). For example, Petitioner notes that Kumar testified that McKinsey did not allow consulting agreements during Petitioner's trial but testified that McKinsey did allow consulting agreements during Rengan's trial. (Compare Rajaratnam Trial Tr., Mar. 10, 2011, at 264-65 with Rengan Trial Tr., June 26, 2014, at 822, 927). Petitioner also notes that Kumar's testimony differed as to why Kumar started tipping Petitioner: at Petitioner's trial, Kumar testified that the reason was because Petitioner was pressing him for information, whereas at Rengan's trial Kumar testified that he did so because he wanted Petitioner to support AMD and was eager to have Galleon become a client of McKinsey. (Compare Rajaratnam Trial Tr. at 279, 288-89 with Rengan Trial Tr., at 844, 956-57). Additional examples of Kumar's allegedly inconsistent statements include his testimony regarding Rengan's involvement in the conspiracy and Rengan's attempts to lure another one of Kumar's colleagues into the conspiracy. (See Reply Mot. Vacate at 19). It is apparent to the Court, however, that none of these statements is relevant to the basis of Petitioner's conviction on Counts Four and Thirteen, which relate to Petitioner's trading in securities of AMD, ATI, and eBay based on inside information. Indeed, the Court also notes that Judge Buchwald made remarks during Rengan's trial that at least some of Kumar's statements were not inconsistent with his previous testimony. (See Rengan Trial Tr. at 889-92, 1039-44).

Even the most serious of the allegedly contradictory statements identified by Petitioner—namely, that Kumar switched his testimony regarding the public/private nature of the AMD/Mubadala merger—are not material because Counts Four and Thirteen do not relate to that deal exclusively. (See Superseding Indictment at ¶¶ 24 and 39). Because Petitioner has not demonstrated that the allegedly inconsistent statements were material, the Court finds that he has failed to meet his initial burden to show perjury for this reason as well.

In addition, the Court notes that at Petitioner's trial there was substantial testimony—not later contradicted—that provided adequate grounds for a jury to convict on Counts Four and Thirteen. Kumar testified at length stating that he provided Petitioner with confidential information related to the ATI/AMD merger that Petitioner ultimately traded on and profited from substantially. (See Rajaratnam Trial Tr. at 350, 354-56,

366-67, 387). This testimony alone would provide sufficient grounds for jurors to find Petitioner guilty on Counts Four and Thirteen. These Counts, in part, allege that “Kumar spoke to [Petitioner] by telephone about AMD's planned acquisition of ATI,” (*id.* ¶ 29), and that “[Petitioner] caused Galleon ... to execute transactions in the securities of ATI on the basis of material, nonpublic information,” (*id.* ¶ 39). At no time did Kumar testify inconsistently about the ATI acquisitions; in fact, he reaffirmed during Rengan's trial that he provided Petitioner with confidential information relating to AMD. (Rengan Trial Tr. at 934-35). Kumar's consistency regarding conduct that directly relates to the basis of Petitioner's convictions on Counts Four and Thirteen further persuades the Court that Kumar did not commit perjury at Petitioner's trial.

*8 Because Petitioner has failed to meet his initial burden that the witness in fact committed perjury, the Court need not address the discrete *Wallach* standards of review and finds that the Petitioner is not entitled to a new trial. However, the Court also notes that Petitioner has failed to demonstrate that the Government knew or should have known about Kumar's alleged perjury. See *Wallach*, 935 F.2d. at 456. Accordingly, Petitioner would again be required to make a showing of materiality, which, as noted above, Petitioner has failed to do.

Petitioner also argues that his conviction on Counts Four and Thirteen should be reversed on the grounds that had the contradictory portions of Kumar's testimony been available for impeachment purposes at the trial, the jury most likely would have found that Kumar lacked credibility and declined to convict. (Mot. Vacate at 42-43). “Upon discovery of previous trial perjury by a government witness, the court should decide whether the jury probably would have altered its verdict if it had the opportunity to appraise the impact of the newly-discovered evidence not only upon the factual elements of the government's case but also upon the credibility of the government's witness.” *United States v. Stofsky*, 527 F.2d 237, 246 (2d Cir. 1975). As explained above, the Court is unpersuaded that Kumar's inconsistent testimony constitutes perjury. Even assuming *arguendo* that Kumar did commit perjury at Petitioner's trial, it appears unlikely to the Court that the jury would have altered its verdict because Kumar's testimony at both trials implicated Petitioner in a criminal scheme and a conspiracy to trade securities on the basis of inside information in a

substantially consistent manner. Accordingly, although as an initial matter it is the Court's finding that Kumar did not commit perjury at Kumar's trial, the unlikelihood that the jury would have altered its verdict if Kumar's credibility had been impeached further persuades the Court to deny Petitioner's request for a new trial.

Petitioner also requests a hearing to determine whether Kumar perjured himself at trial. (Mot. Vacate at 44-45). To be entitled to a hearing, Petitioner must establish a plausible claim of perjury. *See Brandon*, 2011 WL 4801362, at *3. Years after his initial testimony, and after not having reviewed any documents relating to events that happened almost a decade prior, Kumar gave partially inconsistent testimony regarding conduct immaterial to the basis of Petitioner's conviction. (*See supra* at 20-22). Furthermore, Kumar repeatedly reaffirmed that he engaged in insider trading with Petitioner, that he provided Petitioner with confidential information and in return received a benefit from Petitioner, all of which is corroborated by other evidence presented by the Government, including wiretapped conversations, trading records, and account statements. (Opp. at 35). Accordingly, the Court finds that Petitioner's perjury claim is not plausible and that a hearing pursuant to Section 2255 is not warranted.

Petitioner's request for vacatur of Counts Four and Thirteen is denied.

C. Writ or Error Coram Nobis

i. Legal Standard

"The writ of error coram nobis is an extraordinary writ; and an extraordinary remedy [that] should not be granted in the ordinary case." *United States v. Denedo*, 556 U.S. 904, 917 (2009) (internal quotation marks and ellipsis omitted). This writ "can relieve an individual of the continuing noncustodial effects of a criminal conviction." *Kaminski v. United States*, 339 F.3d 84, 90 (2d Cir. 2003). However, "judgment finality is not to be lightly cast aside," and courts must be cautious so that this extreme remedy is only granted in extreme cases. *United States v. Denedo*, 556 U.S. at 916. "Coram nobis is not a substitute for appeal, and relief under the writ is strictly limited to those cases in which errors of the most fundamental character have rendered the proceeding itself irregular and

invalid." *Foont v. United States*, 93 F.3d 76, 78 (2d Cir. 1996) (internal quotations and ellipsis omitted).

*9 "The proceedings leading to the petitioner's conviction are presumed to be correct, and 'the burden rests on the accused to show otherwise.'" *Foont*, 93 F.3d at 78-79 (quoting *United States v. Morgan*, 436 U.S. 502, 512 (1954)). To obtain relief, a petitioner must demonstrate that (1) "there are circumstances compelling such action to achieve justice," (2) "sound reasons exist for failure to seek appropriate earlier relief," and (3) petitioner "continues to suffer legal consequences from his conviction that may be remedied by granting the writ." *Id.* at 79. (quotation marks and alteration omitted).

ii. Discussion

Citing *Newman* and *United States v. Contorinis*, 692 F.3d 136 (2d Cir. 2015), Petitioner contends that his \$53.8 million agreed-upon forfeiture order should be reduced by nearly \$50 million. (Mot. Writ of Error at 1). However, for reasons described above, Petitioner's reliance on *Newman* is unavailing because he cannot establish actual innocence. (*See supra* at 11-17). Because Petitioner has failed to show that one of the three criteria necessary to grant this writ—namely, "circumstances compelling such action to achieve justice," *Foont*, 93 F.3d at 79—the Court rejects Petitioner's claim to exclude from the forfeiture those gains that were allegedly not unlawful under *Newman*. (Mot. Writ of Error at 3).

Further, Petitioner argues that the forfeiture is invalid under *Contorinis* because it exceeds the scope of the forfeiture statute, 18 U.S.C. § 981(A)(1)(C), because the forfeiture order must be limited to defendant's own gains and Petitioner never "received or possessed" the fees. (Mot. Writ of Error at 10-11). However, when Petitioner negotiated and agreed to the forfeiture order, he failed to raise this issue on direct appeal even though the *Contorinis* decision was available to him at that time. The Court therefore cannot find that the forfeiture order was an "error[] of the most fundamental character," *Foreman v. United States*, 247 Fed. Appx. 246, 248 (2d Cir. 2007), or that "sound reasons exist for failure to seek appropriate earlier relief," *Foont*, 93 F.3d at 79. Additionally, unlike in *Contorinis*, where the defendant was merely a portfolio manager of the fund and consequently did not have control over the funds, 692 F.3d at 139, here Petitioner

was the founder and manager of Galleon and did in fact acquire and have control over the funds, (Mot. Writ of Error at 4). Thus, there is no basis to reduce the agreed-upon forfeiture order under Contorinis.

Petitioner's writ of error coram nobis is denied.

III. CONCLUSION

For the foregoing reasons, the Court resolves the various outstanding motions and requests in the following manner:

1. The motion to correct, vacate, and/or set aside his sentence pursuant to Title 28, United States Code,

Section 2255 [dkt. no. 354] and the request for oral argument [dkt. no. 366] are denied.

2. The writ of error coram nobis to vacate, reassess, and amend his order of forfeiture [dkt. no. 351] and the request for oral argument [dkt. no. 367] are denied.

SO ORDERED.

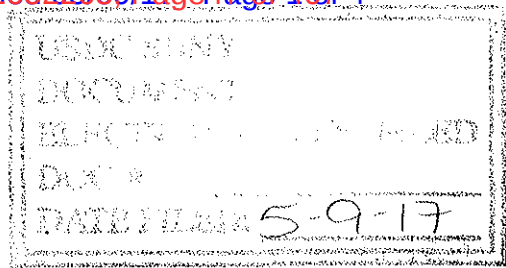
All Citations

Slip Copy, 2017 WL 887027

End of Document

© 2017 Thomson Reuters. No claim to original U.S. Government Works.

Exhibit B



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
RAJ RAJARATNAM, :
 : 15 Civ. 5325 (LAP)
Petitioner, :
 : Related To:
-against- : 09 Cr. 1184 (LAP)
 :
UNITED STATES OF AMERICA, : ORDER
 :
Respondent. :
 :
-----X

Loretta A. Preska, Senior United States District Judge:

On March 3, 2017, the Court denied Raj Rajartnam's ("Rajaratnam" or "Petitioner") motion pursuant to 28 U.S.C. § 2255 to correct, vacate, and/or set aside the sentence. (Op., Mar. 3, 2017, dkt. no. 373). On April 3, 2017, Petitioner filed a motion requesting the Court to issue a Certificate of Appealability ("COA") regarding the question of whether he is actually innocent in light of United States v. Newman, 773 F.3d 438 (2d Cir. 2014), and Salman v. United States, 137 S. Ct. 420 (2016). (Mot., Apr. 3, 2017, dkt. no. 374). The Government opposed this motion by letter dated April 21, 2017. (Opp., April 21, 2017, dkt. no. 376). The motion is denied for the following reasons.

District courts should grant a COA only where a defendant "has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Where a

district court has denied a petitioner's constitutional claim on the merits, the court may issue a certificate only when the petitioner has "demonstrate[d] that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." Slack v. McDaniel, 529 U.S. 473, 484 (2000).

Petitioner presents two arguments in support of his application. First, Petitioner notes that the Court distinguished his case from Newman by highlighting the fact that he was situated very differently from Newman and Chiasson. (Mot. at 3). Petitioner therefore argues that reasonable jurists could debate whether the reasoning in Newman was dependent on how far removed the defendant was from the insiders. (Id.) However, the Court's decision was not solely dependent on how far removed Petitioner was from the insiders. Rather, the Court made this distinction to support its finding that based on the overwhelming evidence adduced at trial a reasonable jury could infer that Petitioner had knowledge that insiders were providing confidential information in exchange for a personal benefit. Reasonable jurists would not find this conclusion debatable.

Second, Petitioner argues that the Court's decision relies on propositions that the Newman Court arguably rejected. (Mot. at 3). Specifically, Petitioner notes that "Newman itself

rejected the reasonableness of drawing an inference of the defendant's knowledge of a benefit received by a remote insider based upon payments made by the defendant to an intermediary . . . or acts of concealment on the defendant's part."

(Id.) (internal citations omitted). Contrary to Petitioner's assertion, the Newman Court did not address whether acts of concealment or payment to intermediate tippees would form a reasonable basis for a jury to find that the defendant had knowledge of the exchange of inside information for a benefit. Moreover, the Court's decision did not assume "that an insider necessarily discloses inside information for a personal benefit." (See Mot. at 3). Rather, the Court found that the extensive evidence adduced at trial allowed the jury to conclude that the defendant had actual knowledge that insiders were providing information in exchange for a benefit, particularly in light of Salman, which held that such benefits need not be pecuniary in nature. (Op. at 12, 14-17). Accordingly, because Petitioner's argument depends on inaccurate representations of both Newman and the Court's Opinion, reasonable jurists would not find the Court's assessment debatable.


CONCLUSION

For the foregoing reasons, the Court denies Petitioner's motion requesting the issuance of a Certificate of Appealability (dkt. no. 374) because Petitioner has failed to identify a claim

that jurists of reason would find debatable. See Slack, 529 U.S. at 478.

SO ORDERED.

Dated: New York, New York
May 9, 2017



LORETTA A. PRESKA
Senior United States District Judge

Exhibit C

2013 WL 6163307 (C.A.2) (Appellate Brief)
United States Court of Appeals, Second Circuit.

UNITED STATES OF AMERICA, Appellee,

v.

Jon HORVATH, Danny Kuo, Hyung G. Lim, Michael Steinberg, Defendants,
Todd Newman, Anthony Chiasson, Defendants-Appellants.

Nos. 13-1837(L), 13-1917(CON).

November 14, 2013.

On Appeal from the United States District Court for the Southern District of New York

Brief for the United States of America

[Antonia M. Apps](#), [Richard C. Tarlowe](#), [Micah W.J. Smith](#), Brent S. Wible, Assistant United States Attorneys, Of Counsel.

[Preet Bharara](#), United States Attorney for the Southern District of New York, Attorney for the United States of America.

***i TABLE OF CONTENTS**

Preliminary Statement	1
Statement of Facts	3
A. The Government's Case	3
1. The Inside Tips Regarding Dell and Newman's and Chiasson's Trades on Those Tips	5
2. The Inside Tips Regarding NVIDIA and Newman's and Chiasson's Trades on Those Tips	12
3. The Benefits Ray and Choi Received for Disclosing Inside Information	14
4. Newman and Chiasson Knew the Dell and NVIDIA Tips Came from Insiders in Breach of a Duty of Confidentiality	17
a. Newman's Knowledge of the Breaches	17
b. Chiasson's Knowledge of the Breaches	21
B. The Defense Case and the Verdict	27
C. The Sentencings	32
Argument:	
Point I--The Jury Instructions Were Correct	32
*ii A. Applicable Law	33
B. Discussion	35
1. The Instruction on the Defendants' Knowledge of the Insiders' Breaches Was Correct	35
a. Relevant Facts	36
b. Discussion	39
i. Tippee Liability Does Not Require Knowledge of a Personal Benefit	39
ii. There Was No Due Process Violation	59
iii. Any Error Was Harmless	59
2. The District Court Properly Instructed the Jury on Conscious Avoidance	66
a. Relevant Facts	66
b. Applicable Law	67
c. Discussion	69
3. The Instruction on Nonpublic Information Was Correct	73
a. Relevant Facts	73
b. Discussion	75
*iii Point II--There Was Sufficient Evidence that the Dell and NVIDIA Insiders Breached a Duty for a Personal Benefit	79
A. Applicable Law	80
B. Discussion	81

1. There Was Sufficient Evidence that the Insiders Intentionally Breached a Duty of Confidentiality ...	81
2. There Was Sufficient Evidence that the Insiders Received Personal Benefits	85
Point III--There Was No Prejudicial Variance as to Count Two	90
A. Applicable Law	91
B. Relevant Facts	92
C. Discussion	95
Point IV--Chiasson's Sentence Was Reasonable	102
A. Relevant Facts	102
B. Applicable Law	106
1. Appellate Review of Sentences	106
2. Consideration of Sentencing Disparities	108
*iv C. Discussion	109
1. Chiasson's Sentence Was Procedurally Reasonable	109
2. Chiasson's Sentence Was Substantively Reasonable	113
Point V--The Forfeiture Order Was Proper	118
A. Relevant Facts	118
B. Applicable Law	122
C. Discussion	124
1. The District Court's Factual Findings Were Not Clearly Erroneous	124
2. The District Court Properly Determined Forfeiture by a Preponderance of the Evidence	127
Conclusion	133

*v TABLE OF AUTHORITIES

Cases:

<i>Alleyne v. United States</i> , 133 S. Ct. 2151 (2013)	128, 129, 130, 132
<i>Anderson v. City of Bessemer City</i> , 470 U.S. 564 (1985)	123
<i>Apprendi v. New Jersey</i> , 530 U.S. 466 (2000)	127
<i>Bateman Eichler, Hill Richards, Inc. v. Berner</i> , 472 U.S. 299 (1985)	41
<i>Berkovich v. Hicks</i> , 922 F.2d 1018 (2d Cir. 1991)	100
<i>Brady v. Maryland</i> , 373 U.S. 83 (1963)	78
<i>Carpenter v. United States</i> , 484 U.S. 19 (1987)	77
<i>Dirks v. SEC</i> , 463 U.S. 646 (1983)	passim
<i>Gall v. United States</i> , 552 U.S. 38 (2007)	107
<i>Global-Tech Appliances, Inc. v. SEB S.A.</i> , 131 S. Ct. 2060 (2011)	71
<i>In re Investors Management Co.</i> , 44 S.E.C. 633 (1971)	40, 47
*vi <i>Jackson v. Virginia</i> , 443 U.S. 307 (1979)	80
<i>Libretti v. United States</i> , 516 U.S. 29 (1995)	128
<i>Rodriguez de Quijas v. Shearson/American Express, Inc.</i> , 490 U.S. 477 (1989)	128
<i>SEC v. Anton</i> , No. 06-2274, 2009 WL 1109324 (E.D. Pa. Apr. 23, 2009)	86
<i>SEC v. Materia</i> , 745 F.2d 197 (2d Cir. 1984)	54
<i>SEC v. Maxwell</i> , 341 F.Supp.2d 941 (S.D. Ohio 2004)	86
<i>SEC v. Musella</i> , 678 F. Supp. 1060 (S.D.N.Y. 1988)	55
<i>SEC v. Obus</i> , 693 F.3d 276 (2d Cir. 2012)	passim
<i>SEC v. Thrasher</i> , 152 F. Supp. 2d 291 (S.D.N.Y. 2001)	55
<i>SEC v. Warde</i> , 151 F.3d 42 (2d Cir. 1998)	passim
<i>Southern Union Co. v. United States</i> , 132 S. Ct. 2344 (2012) .	128, 129
<i>Staples v. United States</i> , 511 U.S. 600 (1994)	50, 51
*vii <i>State Teachers Ret. Bd. v. Fluor Corp.</i> , 592 F. Supp. 592 (S.D.N.Y. 1984)	56, 59
<i>United States v. Aina-Marshall</i> , 336 F.3d 167 (2d Cir. 2003) .	69
<i>United States v. Alkins</i> , 925 F.2d 541 (2d Cir. 1991)	34, 77
<i>United States v. Autuori</i> , 212 F.3d 105 (2d Cir. 2000)	80
<i>United States v. Baker</i> , 693 F.2d 183 (D.C. Cir. 1982)	45
<i>United States v. Booker</i> , 543 U.S. 220 (2005)	106, 128

<i>United States v. Botti</i> , 711 F.3d 299 (2d Cir. 2013)	34, 60
<i>United States v. Cassese</i> , 428 F.3d 92 (2d Cir. 2005)	52
<i>United States v. Cavera</i> , 550 F.3d 180(2d Cir. 2008)	106, 107
<i>United States v. Chavez</i> , 549 F.3d 119 (2d Cir. 2008)	80
<i>United States v. Contorinis</i> , 692 F.3d 136 (2d Cir. 2012)	73, 76, 123
<i>United States v. Coplan</i> , 703 F.3d 46 (2d Cir. 2012)	76
<i>United States v. Crosby</i> , 397 F.3d 103 (2d Cir. 2005)	106
*viii <i>United States v. Cuti</i> , 720 F.3d 453 (2d Cir. 2013)	67, 68, 71
<i>United States v. Day</i> , 700 F.3d 713 (4th Cir. 2012)	129
<i>United States v. Dixon</i> , 536 F.2d 1388 (2d Cir. 1976)	51
<i>United States v. Dupre</i> , 462 F.3d 131 (2d Cir. 2006)	91, 98, 99
<i>United States v. Falcone</i> , 257 F.3d 226 (2d Cir. 2001)	44, 54
<i>United States v. Falu</i> , 776 F.2d 46 (2d Cir. 1985)	45
<i>United States v. Feola</i> , 420 U.S. 671 (1975)	44
<i>United States v. Fernandez</i> , 443 F.3d 19 (2d Cir. 2006)	107, 108, 109, 118
<i>United States v. Figueroa</i> , 165 F.3d 111 (2d Cir. 1998)	44, 46
<i>United States v. Florez</i> , 447 F.3d 145 (2006)	108, 109, 116
<i>United States v. Frias</i> , 521 F.3d 229 (2d Cir. 2008)	108
<i>United States v. Fruchter</i> , 411 F.3d 377 (2d Cir. 2005)	<i>passim</i>
<i>United States v. Gabriel</i> , 125 F.3d 89 (2d Cir. 1997)	69
*ix <i>United States v. Garcia</i> , 992 F.2d 409 (2d Cir. 1993)	88
<i>United States v. Gaskin</i> , 364 F.3d 438 (2d Cir. 2004)	80, 123
<i>United States v. Goffer</i> , 721 F.3d 113 (2d Cir. 2013)	<i>passim</i>
<i>United States v. Griffith</i> , 284 F.3d 338 (2d Cir. 2002)	44
<i>United States v. Han</i> , 230 F.3d 560 (2d Cir. 2000)	34
<i>United States v. Hassan</i> , 578 F.3d 108 (2d Cir. 2008)	80
<i>United States v. Heimann</i> , 705 F.2d 662 (2d Cir. 1983)	91
<i>United States v. Hopkins</i> , 53 F.3d 533 (2d Cir. 1995)	68
<i>United States v. Irving</i> , 554 F.3d 64 (2d Cir. 2009)	109
<i>United States v. Jiau</i> , -- F.3d --, 2013 WL 5735348 (2d Cir. Oct. 23, 2013)	<i>passim</i>
<i>United States v. Kaiser</i> , 609 F.3d 556 (2d Cir. 2010)	51, 52, 58
<i>United States v. Kozeny</i> , 667 F.3d 122 (2d Cir. 2011)	68, 71
*x <i>United States v. LaPorta</i> , 46 F.3d 152 (2d Cir. 1994)	44
<i>United States v. LaSpina</i> , 299 F.3d 165 (2d Cir. 2002)	97
<i>United States v. Leahy</i> , 438 F.3d 328 (3d Cir. 2006)	131
<i>United States v. Libera</i> , 989 F.2d 596 (2d Cir. 1993)	<i>passim</i>
<i>United States v. Mahaffy</i> , 693 F.3d 113 (2d Cir. 2012)	77, 78, 79
<i>United States v. McDermott</i> , 918 F.2d 319 (2d Cir. 1990)	91
<i>United States v. Mingoia</i> , 424 F.2d 710 (2d Cir. 1970)	45
<i>United States v. Mitchell</i> , 328 F.3d 77 (2d Cir. 2003)	34
<i>United States v. Moran-Toala</i> , 726 F.3d 334 (2d Cir. 2013) ..	33
<i>United States v. Mucciante</i> , 21 F.3d 1228 (2d Cir. 1994)	91
<i>United States v. Mylett</i> , 97 F.3d 663 (2d Cir. 1996)	43, 54
<i>United States v. Nektalov</i> , 461 F.3d 309 (2d Cir. 2006)	118
<i>United States v. O'Hagan</i> , 521 U.S. 642 (1997)	54
*xi <i>United States v. Pabon-Cruz</i> , 255 F. Supp. 2d 200 (S.D.N.Y. 2003)	60, 64
<i>United States v. Peltz</i> , 433 F.2d 48 (2d Cir. 1970)	52
<i>United States v. Phillips</i> , 704 F.3d 754 (9th Cir. 2012)	129
<i>United States v. Polizzi</i> , 500 F.2d 856 (9th Cir. 1974)	100
<i>United States v. Quinn</i> , 359 F.3d 666 (4th Cir. 2004)	88
<i>United States v. Rajaratnam</i> , 802 F. Supp. 2d 491 (S.D.N.Y. 2011)	56
<i>United States v. Reifler</i> , 446 F.3d 65 (2d Cir. 2006)	131
<i>United States v. Reilly</i> , 76 F.3d 1271 (2d Cir. 1996)	123
<i>United States v. Rigas</i> , 490 F.3d 208 (2d Cir. 2007)	91, 108
<i>United States v. Rigas</i> , 583 F.3d 108 (2d Cir. 2009)	107

<i>United States v. Roglieri</i> , 700 F.2d 883 (2d Cir. 1983)	45
<i>United States v. Royer</i> , 549 F.3d 886 (2d Cir. 2008)	123
<i>United States v. Salmonese</i> , 352 F.2d 608 (2d Cir. 2003)	91
*xii <i>United States v. Sanders</i> , 211 F.3d 711 (2d Cir. 2000) ..	45
<i>United States v. Santoro</i> , 647 F. Supp. 153 (E.D.N.Y. 1986) ..	56
<i>United States v. Strother</i> , 49 F.3d 869 (2d Cir. 1995)	101
<i>United States v. Svoboda</i> , 347 F.3d 471 (2d Cir. 2003)	68, 71
<i>United States v. Tarallo</i> , 380 F.3d 1174 (9th Cir. 2004)	52
<i>United States v. Treacy</i> , 639 F.3d 32 (2d Cir. 2011)	123
<i>United States v. Weintraub</i> , 273 F.3d 139 (2d Cir. 2001)	44, 45, 46, 51
<i>United States v. Werner</i> , 160 F.2d 438 (2d Cir. 1947)	60, 64
<i>United States v. Wexler</i> , 522 F.3d 194 (2d Cir. 2008)	77
<i>United States v. Whitman</i> , No. 12 Cr. 125 (JSR), 2012 WL 5505080 (S.D.N.Y. Nov. 19, 2012)	56, 57, 60
<i>United States v. Wilkerson</i> , 361 F.3d 717 (2d Cir. 2004)	34
<i>United States v. Wills</i> , 476 F.3d 103 (2d Cir. 2007)	108
*xiii <i>United States v. X-Citement Video, Inc.</i> , 513 U.S. 64 (1994)	50
<i>Statutes, Rules & Other Authorities:</i>	
8 U.S.C. § 1327	44
15 U.S.C. § 78ff(a)	51
18 U.S.C. § 111	44
18 U.S.C. § 641	45
18 U.S.C. § 981(a)(1)(C)	122, 130
18 U.S.C. § 1361	45
18 U.S.C. § 1708	45
18 U.S.C. § 2314	45
18 U.S.C. § 2423	44
18 U.S.C. § 3553(a)	116
18 U.S.C. § 3553(a)(6)	108
28 U.S.C. § 2461	122
28 U.S.C. § 2461(c)	131
42 U.S.C. § 7413(c)(1)	44
17 C.F.R. § 243.100	48
17 C.F.R. § 243.100(a)	48
17 C.F.R. § 243.101(c)	48
Fed. R. Crim. P. 32.2(b)(1)(B)	123
*xiv Fed. R. Crim. P. 52(a)	34
Fed. R. Evid. 611(a)	100
Fed. R. Evid. 613(b)	101
U.S.S.G. § 2B1.4	109, 112
Insider Trading and Securities Fraud Enforcement Act of 1988, H.R. Rep. No. 100-910 (1988)	115
Insider Trading Sanctions Act of 1984, H.R. Rep. No. 98-355 (1983)	115
<i>Selective Disclosure and Insider Trading</i> , 64 Fed. Reg. 72590-01 (Dec. 28, 1999)	49
<i>Selective Disclosure and Insider Trading</i> , 65 Fed. Reg. 51716-01 (Aug. 24, 2000)	49

*1 Preliminary Statement

Todd Newman and Anthony Chiasson appeal from judgments of conviction entered on May 9, 2013, and May 14, 2013, respectively, in the United States District Court for the Southern District of New York, following a six-week jury trial before the Honorable Richard J. Sullivan, United States District Judge.

Superseding Indictment S2 12 Cr. 121 (RJS) (the “Indictment”) was filed on August 28, 2012, in twelve counts. Count One charged Newman, Chiasson, and a co-defendant with conspiracy to commit securities *2 fraud, in violation of Title 18, United States Code, Section 371. Each of Counts Two through Five charged Newman and each of Counts Six through Ten charged Chiasson with securities fraud, in violation of Title 15, United States Code, Sections 78j(b) and 78ff; Title 17, Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2; and Title 18, United States Code, Section 2.¹

¹ The co-defendant in the conspiracy count, who pleaded guilty before trial, was charged with securities fraud in Counts Eleven and Twelve.

Trial commenced on November 7, 2012, and ended on December 17, 2012, when the jury returned its verdict, finding Newman and Chiasson guilty on each of the counts in which they were charged.

On May 2, 2013, the District Court sentenced Newman to an aggregate term of 54 months' imprisonment, to be followed by an aggregate one-year term of supervised release, imposed a \$500 mandatory special assessment, and ordered Newman to forfeit \$737,724 and to pay a \$1 million fine. On May 13, 2013, the Court sentenced Chiasson to an aggregate term of 78 months' imprisonment, to be followed by an aggregate one-year term of supervised release, imposed a \$600 mandatory special assessment, and ordered Chiasson to pay a \$5 million fine, deferring the determination of the forfeiture amount. On June 28, 2013, following further briefing by the parties, the Court ordered Chiasson to forfeit \$1,382,217.

*3 At the conclusion of his sentencing proceeding, Newman moved for bail pending appeal. By order dated May 8, 2013, the District Court denied Newman's motion. Chiasson also moved for bail pending appeal at his sentencing proceeding, which motion the Court denied for the reasons set forth in its May 8, 2013 order. Both Newman and Chiasson thereafter filed motions in this Court for bailing pending appeal. On June 21, 2013, this Court granted those motions. Newman and Chiasson thus remain free on bail pending appeal.

Statement of Facts

A. The Government's Case

The evidence at trial established that Newman, a portfolio manager at a hedge fund called Diamondback Capital Management, LLC (“Diamondback”), and Chiasson, a co-founder of a hedge fund called Level Global Investors, L.P. (“Level Global”), participated in an insider trading scheme along with a cohort of corrupt analysts at various hedge funds and investment firms who exchanged material, nonpublic information obtained from employees of publicly traded technology companies. The analysts provided the inside information they obtained to their portfolio managers—including Newman and Chiasson—who, in turn, used that information to trade in securities. The trial focused largely on tips from insiders at Dell, Inc. (“Dell”) and NVIDIA Corporation (“NVIDIA”), who breached duties they owed to their employers by disclosing their companies' confidential earnings numbers before that information was publicly released. *4 Based on this inside information, Newman and Chiasson executed trades in Dell and NVIDIA securities, earning approximately \$4 million and \$68 million, respectively, in illicit profits for their funds.²

² Counts Two, Three, Four, and Six through Nine were based on trades in Dell securities shortly before Dell's May 2008 and August 2008 earnings announcements. Counts Five and Ten were based on trades in NVIDIA securities shortly before NVIDIA's May 2009 earnings announcement.

The Government's proof included: (1) the testimony of cooperating witnesses Sandeep (“Sandy”) Goyal and Hyung Lim, who received tips from insiders at Dell and NVIDIA and shared the tips with corrupt analysts; (2) the testimony of cooperating witnesses Jesse Tortora and Spyridon (“Sam”) Adondakis, who worked as analysts for Newman and Chiasson, respectively,

and passed illegal tips to them; (3) the testimony of Dell and NVIDIA representatives establishing that the information disclosed to the defendants was confidential and that insiders breached duties of confidentiality in divulging it; (4) e-mails and instant messages corroborating the analysts' testimony; (5) compliance manuals of the defendants' hedge funds, which banned trading on inside information; and (6) telephone and trading records showing trades executed shortly after the defendants received inside tips from their analysts.

***5 1. The Inside Tips Regarding Dell and Newman's and Chiasson's Trades on Those Tips**

Between 2007 and May 2009, Rob Ray worked in Dell's investor relations department, where he had access to Dell's financial information as the company consolidated its earnings numbers from its various business units each quarter. (Tr. 2759, 2769; GX 1657).³ For eight quarters in a row, Ray disclosed Dell's consolidated earnings numbers to Sandy Goyal, an analyst at Neuberger Berman, before the information was released to the public. (Tr. 2769, 2782, 2804, 2808, 2813; GX 39, 1704A, 1707). Ray provided multiple updates each quarter, often during the consolidation process (*i.e.*, between the close of the quarter and the earnings announcement). (Tr. 2769, 2781-82, 2793, 2804, 2808, 2813, 2820; GX 39, 1704A, 1707).⁴

³ “Tr.” refers to the trial transcript; “GX” refers to a Government Exhibit introduced at trial; “DX” refers to a Defense Exhibit introduced at trial; “Newman Br.” and “Chiasson Br.” refer to the defendants' respective briefs on appeal; “A.” refers to the appendix filed with those briefs; and “PSR” or “Presentence Report” refers to the Presentence Investigation Report prepared by the United States Probation Office (the “Probation Office”) in connection with Chiasson's sentencing.

⁴ This internal consolidation of financial results is often referred to as a “roll-up” of financial information.

***6** Upon receiving this information from Ray, Goyal shared it with Tortora, an analyst who worked for Newman at Diamondback. (Tr. 136, 144). Tortora, in turn, provided the information to Newman and certain other analysts with whom he shared inside information, including Sam Adondakis of Level Global. Adondakis passed the tips along to Chiasson. (Tr. 159; GX 214). Both Newman and Chiasson traded on the inside information Ray provided about Dell's earnings in advance of Dell's earnings announcements in May, August, and November of 2008, and earned substantial profits in connection with two of those quarters. (GX 51, 56, 59, 64).

Ray was not Goyal's primary contact at Dell for legitimate communications; Shep Dunlap, another investor relations employee at Dell, had that role. (Tr. 1472-73, 1475, 1631; GX 736, 759). Goyal spoke to Dunlap during business hours. By contrast, Ray, who worked in a cubicle where his criminal conversations could be overheard, provided confidential, inside information to Goyal at night and on weekends. (GX 26, 27; Tr. 1631). After Ray left Dell's investor relations team in May 2009 and joined the company's corporate development department, where he had no legitimate reason to discuss Dell's performance with analysts, he continued to provide inside information to Goyal. (GX 27, 1657; Tr. 2867).

Ray provided precise information concerning key portions of Dell's earnings results, including Dell's revenues, margins, and operating expenses. (Tr. 150, 154). For example, in advance of Dell's May 28, 2008 earnings announcement, Ray disclosed that Dell ***7** would report \$15.8 billion in revenue and a gross margin between 18.5 and 18.6 percent. (*See* GX 600A (notes of a corrupt analyst documenting Ray's tip)). Ray provided similarly precise information before Dell announced its financial results in August and November of 2008. (*See* GX 214 (August 5, 2008 email from Tortora to Newman reporting that “gm [gross margin] looking at 17.5%”), 257 (November 14, 2008 e-mail from Tortora to Newman relaying “rev[enues of] 15.150 [billion], om [operating margin of] 6.1%”)).

The confidential financial information Ray disclosed to Goyal was also largely accurate. As Tortora explained, there were occasions when certain metrics were “slightly off,” but “the most important thing” was that Ray's information “allowed [the coconspirators] to accurately predict or project whether earnings were going to be materially better or worse than market expectations, thus allowing for trading on the stock.” (Tr. 156). For example, before Dell's May 2008 earnings announcement,

as Dell was consolidating its financial information, Ray disclosed that Dell would report gross margins between 18.5 and 18.6 percent. (See GX 600A). At the time Ray disclosed this information, it matched Dell's internal numbers. (See GX 1712, 1712A at 2 (May 12, 2008 internal Dell report showing Generally Accepted Accounting Principles ("GAAP") and non-GAAP gross margins of 18.5 percent and 18.6 percent, respectively)).

As another example, in advance of Dell's August 2008 quarterly announcement, Ray told Goyal that Dell would report a gross margin number lower than *8 17.5 percent, well below market expectations; consistent with Ray's tip, Dell in fact reported GAAP and non-GAAP margins of 17.2 and 17.4 percent, respectively. (Tr. 249, 1769; GX 238A at 5, 586A). Although Ray's tip that Dell would report revenues of \$16.2 billion was slightly below the actual number (\$16.4 billion), this discrepancy was insignificant because the critical metric that quarter was the gross margin number. Because Dell reported gross margins substantially below the prevailing market expectation of 18.3 percent, the stock price fell by almost 14 percent--the largest decline in eight years. (GX 1842, 3003S).⁵ Ray similarly provided accurate information the following quarter. (See GX 255 (indicating Ray *9 told Goyal revenues would be \$15.15 billion for the quarter ending in October 2008), 1807 (Dell reported revenues of \$15.162 billion)).⁶

⁵ Newman mischaracterizes an instant message exchange between Tortora and Newman at the time of the announcement. He asserts that Tortora "freaked" when he saw Dell reported \$16.4 billion in revenue. (Newman Br. 13 (quoting A. 2019)). The full text of the instant message shows that Tortora "freaked when [he] saw [the] 16.4 [billion revenue number] . . . and stock go up." (A. 2019 (emphasis added)). At the time of the announcement, Newman held a large short position in Dell. Following the announcement, Dell's price initially rose (apparently in response to the higher than expected revenue number) before falling precipitously based on the margin information. When the stock price rose initially, Tortora was concerned that the market would not react as expected to the margin number. (Tr. 883).

⁶ Newman misinterprets a February 20, 2009 instant message in which Tortora told Adondakis that he had been "dead wrong" on Dell the prior quarter, suggesting Tortora meant Ray's information had been incorrect. (Newman Br. 14 n.9). Tortora, however, explained that the information was accurate, but that the stock market did not react as expected based on Dell's results; he further explained that his comment about being "dead wrong" referred to his prediction of how the market would react. (Tr. 921).

In tipping Goyal, Ray breached his duty of confidentiality to Dell. Ray was never authorized to disclose Dell's nonpublic financial information to outsiders. (Tr. 2807). Dell's policies strictly prohibited disclosure of Dell's confidential information, and Dell's unannounced consolidated earnings numbers counted among the company's most sensitive information. (Tr. 2766-68, 2780-81). Dell allowed only approximately 20 employees to access this information, including the Chief Executive Officer, the Chief Financial Officer, and certain members of the investor relations team who needed the information to prepare for the company's quarterly earnings announcements. (Tr. 2800-01, 2815-16). Members of the investor relations team--including Ray--received training on Dell's nondisclosure policies and how to answer questions from investors so as to avoid inadvertently disclosing *10 current quarter earnings data before its public release. (Tr. 2774-75, 2823-27, 2973).⁷

⁷ Members of Dell's investor relations team were permitted to help analysts with models pertaining to Dell's historical financial information, but were prohibited from discussing current quarterly financial information. (Tr. 2926). Moreover, while Dell's investor relations group sought to target certain institutional investors as long-term investors in the company, Dell strictly prohibited the selective release of quarterly earnings information before its public announcement. (Tr. 2777-78, 2784, 2974).

In addition to this training on Dell's nondisclosure policy, Ray was explicitly warned not to disclose Dell's financial results before the company announced its earnings in May and August of 2008--the very announcements underlying the substantive counts charging trades in Dell securities. For example, on May 12, 2008, Ray and other members of Dell's investor relations team received an e-mail that contained Dell's financial results for the quarter, scheduled to be announced later that month. (GX 1712, 1712A; Tr. 2186). In the e-mail, Lynn Tyson, who was then the head of Dell's investor relations team, warned that she would "hunt . . . down" anyone who "breath[ed] a peep" of the results. (GX 1712). Notwithstanding this warning, on May 11

and May 15, Ray had lengthy telephone conversations with Goyal during which he disclosed Dell's confidential earnings numbers. (GX 31, 32, 33, 600A, 1712A at 2).⁸ Both Chiasson and Newman traded on Ray's information in advance of Dell's May 2008 earnings announcement, reaping over \$1 million and \$4 million in profits, respectively. (GX 51, 56). Chiasson did so on May 12 and May 16, shortly after Adondakis passed the information to him (GX 34, 52), and Newman did so on May 16, upon receiving the information from Tortora (GX 33, 50).

⁸ The financial information contained in Government Exhibit 1712A was also available on a shared network drive to which Ray had access. (Tr. 2817, 2843).

Ray received similar warnings not to discuss Dell's financial information in advance of the August 2008 quarterly earnings announcement. On August 8--a week after the quarter ended--Ray received an email advising investor relations personnel to be "especially vigilant about not sharing current information." (GX 1730). Yet at 10:30 p.m. on August 14, only hours after receiving the latest roll-up of Dell's financial information, Ray had a lengthy telephone conversation with Goyal in which he disclosed the information. (GX 26, 1732). Goyal spoke to Tortora the next morning, before the market opened; thereafter, starting at 10:24 a.m., Newman began to increase his short position in Dell stock. (GX 2501; Tr. 1201-09).

Then, on August 20, Ray and other investor relations personnel received an e-mail stating, "[w]e are keeping a tight lid on this"--meaning Dell's earnings numbers--"due to our performance in the quarter." *12 (GX 1733). Nonetheless, at 9:29 p.m. on August 24, Ray had another lengthy telephone conversation with Goyal and disclosed confidential information to him. (GX 26). The next day, Goyal spoke to Tortora, who subsequently told both Newman and Adondakis that Dell would miss market expectations on gross margins. (GX 26, 42, 230, 231). After receiving this information, both Newman and Chiasson increased their short positions in Dell securities. (GX 2501-DA, 2501-LA). Newman's and Chiasson's trading on the Dell tips in advance of the August 28, 2008 earnings announcement resulted in approximately \$3 million and \$54 million, respectively, in illegal profits for their hedge funds. (GX 59, 64).

2. The Inside Tips Regarding NVIDIA and Newman's and Chiasson's Trades on Those Tips

Like Dell, NVIDIA limited employee access to its internal accounting database. Chris Choi, however, worked in NVIDIA's finance department and was involved in preparing the company's quarterly financial statements; he therefore had access to the company's earnings numbers before they were publicly announced. (GX 1858A; Tr. 3095-96). NVIDIA's policies prohibited disclosure of its "financial results" to outsiders, and Choi signed a confidentiality agreement when he began working at NVIDIA. (GX 1953; Tr. 3101, 3103). Moreover, Choi was not a member of the company's investor relations department, and was not authorized to speak to investors. (Tr. 3098-101, 3103). Choi nonetheless repeatedly shared *13 NVIDIA's nonpublic financial information with Hyung Lim, a friend he knew from church.

Over the course of more than two years, Choi tipped Lim on numerous occasions, providing multiple updates in advance of each quarterly earnings announcement. (Tr. 3097-98, 3101-03; GX 1952, 1959). The information Choi provided was both precise and accurate. For example, on February 9 and February 10, 2009--before NVIDIA announced its earnings for the quarter ending in January of that year-- Choi told Lim that quarterly revenues would be \$481 million, down 46.4 percent from the previous quarter, and that GAAP gross margins would be 29.4 percent. (See GX 806 (e-mail documenting the tip)). Consistent with Choi's tip, after the market closed on February 10, NVIDIA reported revenues of \$481.1 million (a 46 percent decrease from the prior quarter) and a GAAP gross margin number of 29.4 percent. (GX 1976).⁹ As another example, Choi told Lim that, for the quarter ending in April 2009, NVIDIA would report revenues of "around \$668 million" and gross margins of 30 percent. (See GX 820 (e-mail reflecting Choi's tip)). Consistent with this tip, NVIDIA later reported revenues of \$664.2 million and non-GAAP gross margins of 30.6 percent. (GX 1979A).

9 The information Choi provided as to the non-GAAP gross margin number was incorrect, although it appeared that the error was in calculating the non-GAAP gross margins based on (accurate) information Choi provided about an inventory charge. (Tr. 490, 997-98).

*14 NVIDIA did not sanction such disclosures. Not only did the company prohibit employees like Choi from divulging nonpublic financial information to outsiders, but, as a corrupt analyst wrote in an e-mail to Tortora in February 2009, the head of NVIDIA's investor relations group "had a firm policy about not calling back even in the last month of [the] quarter." (GX 803; Tr. 493-94).

After receiving this inside information from Choi, Lim passed it on to his friend Danny Kuo, who worked as an analyst at an investment company in California. (Tr. 3039). Kuo, in turn, shared the information with his boss and other corrupt analysts, including Tortora and Adondakis. (GX 804, 818). Both Newman and Chiasson traded on the information ahead of NVIDIA's May 7, 2009 earnings announcement, earning over \$73,000 and \$10 million, respectively. (GX 71, 73).

3. The Benefits Ray and Choi Received for Disclosing Inside Information

Ray and Choi each disclosed inside information for personal benefit. In exchange for providing material, nonpublic information about Dell to Goyal, Ray received career advice and assistance from Goyal.¹⁰ After *15 attending business school with Ray, Goyal worked at Dell before becoming a Wall Street analyst. (Tr. 1390). Ray wanted to follow in Goyal's path. (Tr. 1396-1403; *see* GX 700 (Ray stating, "I wanted to call and chat with you sometime and get some feedback about your experience so far when you have a little time. As you know, I am extremely interested in the equity research area and it will be great to get some perspective from you."), 705 (Ray thanking Goyal for career advice, attaching his résumé, and stating, "Since you have successfully made the transition from Dell to investment management, I would love to hear your feedback on my resume only if/when you have some time")). In September 2007, Ray told Goyal that he was "still desperately looking to break into the buy/sell side." (GX 708). Goyal immediately responded that he had "put in a good word" for Ray with a buy-side person with whom Goyal was having lunch at the time. (GX 708). Over the next two years, Goyal continued to advise Ray on a range of topics, from discussing an examination that is required in order to become a financial analyst to editing Ray's résumé and sending it to a Wall Street recruiter. (Tr. 1396-1403; GX 703, 705, 710, 715, 719, 719B, 720, 733).

¹⁰ Goyal told Ray that he worked in the research department at Neuberger Berman, writing research reports that formed the basis of stock recommendations Goyal sent to the firm's portfolio managers. (Tr. 1424, 1643). While Goyal did not tell Ray that he was trading on the information or sharing it with anyone outside Neuberger, the timing of Goyal's inquiries, with repeated updates during Dell's consolidation process, made apparent that Goyal sought to profit from the information before it became public.

At critical points in 2008, Ray and Goyal exchanged earnings numbers for career advice in the *16 very same conversation. For example, on August 14, 2008, two weeks before Dell's earnings announcement, Ray received by e-mail the "final" internal consolidation of Dell's earnings numbers. (GX 1732). That evening, Goyal sent an e-mail to Ray containing an investment pitch for Ray to use in connection with job interviews. (GX 734; Tr. 1461). A few hours later, Ray and Goyal had a lengthy telephone conversation during which Ray tipped Goyal. (GX 39). The next day, Goyal contacted Tortora, who passed Dell's earnings information along to Newman and Adondakis. (Tr. 266-70, 1203-07). Both Newman and Chiasson subsequently traded on the information the day they received it.

Ray and Goyal were also friends. The men had known each other for years. (Tr. 1469-70). They knew each other's wives, talked about going on family vacations together, and spoke frequently on the telephone, late at night, often for lengthy periods of time. (Tr. 1469-70).

Choi provided NVIDIA's earnings numbers to his friend Lim in advance of each quarterly earnings announcement in 2009. (Tr. 3082-83). Lim described Choi as a "family friend"; they had attended the same church, had lunches together, and had

participated in “occasional other church activities” since 2002. (Tr. 3032-33). Lim told Choi that he traded NVIDIA stock, and at times solicited Choi's view on whether trading in the stock would be profitable. (Tr. 3044, 3083). Lim sought NVIDIA's earnings information from Choi following a request for inside information from Lim's friend Kuo, who Lim knew wanted to execute *17 trades based on the information. (Tr. 3033). Kuo gave Lim a total of \$15,000 in cash and various valuable items in return for the information. (Tr. 3010, 3039, 3042).

4. Newman and Chiasson Knew the Dell and NVIDIA Tips Came from Insiders in Breach of a Duty of Confidentiality

a. Newman's Knowledge of the Breaches

Newman knew that the information Tortora gave him concerning Dell and NVIDIA came from company insiders who disclosed the information in breach of their duties to keep it confidential, and not for any legitimate corporate purpose. Tortora told Newman the Dell tips came from a Dell employee. (Tr. 160-61). Tortora gave Newman the Dell tips he received from Goyal “verbatim,” including references to Dell's “rollup” of its financial numbers. (Tr. 160). As discussed, those tips were specific, provided shortly before quarterly announcements, and materially different from market expectations. For example, on August 5, 2008, just four days after the quarter had closed, Tortora informed Newman that the “Q finished on fri, numbers still coming in,” but that Goyal had reported, “gm looking at 17.5% vs street at 18.3%, however could go higher as things get rolled up.” (GX 214; *see also* GX 287 (Newman writing to Tortora, “hey when u th[in]k sandy [Goyal] checks in,” and Tortora responding, “most likely next week as close [of the quarter] today, but let me ask him today”), 296 (Tortora forwarding e-mail to Newman in which Goyal *18 wrote to Tortora, “waiting for qtr to end or come closer so that numbers more firm”))).

The timing and frequency of the Dell updates--coming multiple times between the close of the quarter and the earnings announcements--as well as the specificity of the information demonstrated that an insider disclosed the information in breach of duty and for an improper purpose. Only a company insider with access to earnings numbers as they were being consolidated for a quarterly announcement could provide such disclosures. Moreover, Newman was keenly interested in Goyal's tips, at times pestering Tortora to obtain updates from Goyal shortly before Dell's earnings announcement. (*See, e.g.*, GX 228 (e-mail dated August 25, 2008, from Newman to Tortora asking, “U think we get one more dell update before [the earnings report is released on] thurs?”), 287 (instant message dated May 1, 2009, in which Newman asked Tortora, “hey when u thk sandy checks in?”)).

Moreover, Newman knew that Goyal communicated with this particular Dell contact at night and on the weekend, rather than during the work day. When Newman asked Tortora in late October 2008 to confirm whether Dell would be issuing a mid-quarter update, Tortora responded that he had “spoke[n] to [Goyal],” who was “putting in a call to [his] main contact,” but that Goyal “usually wont hear back from him til evening as calls him outside of work.” (GX 322; *see also* GX 197 (in an e-mail chain forwarded to Newman, Tortora asked Goyal for “anything new on dell,” and Goyal responded that he was not able to reach his contact over the weekend), 242 *19 (Tortora telling Newman that Goyal “spoke to his guy [at Dell] over weekend”))).

That Newman authorized \$175,000 in secret payments to Goyal through a sham consulting arrangement with Goyal's wife further demonstrated that Newman knew he was improperly obtaining material, nonpublic information regarding Dell. (GX 750-54, 775A, 776, 780A, 781A, 2269, 2270; Tr. 1353). Indeed, Newman agreed to award Goyal a \$100,000 bonus at the end of 2008, explaining to Tortora that Goyal “helped us most.” (GX 790). Newman would have had no reason to pay Goyal such a large sum if Goyal's contact at Dell had been authorized to disclose that information to investors.

As for NVIDIA, Newman received multiple updates on the company's earnings numbers shortly before three quarterly announcements in 2009. In the quarter before Newman made the illicit trade charged in Count Five, Tortora forwarded Newman an e-mail from Kuo containing NVIDIA's earnings numbers, including its revenue and gross margin data. (GX 805). In the e-mail, Kuo was explicit about the fact that the information was from “an accounting manager at NVDA,” and that Kuo had received it “through a friend.” (GX 805). The e-mail provided precise numbers and described an inventory charge, which information could have come only from a NVIDIA insider with access to the company's confidential financial data. The revenue and GAAP gross margin numbers proved to be accurate, as Tortora reminded Newman before Newman decided to trade on

another tip the insider provided in advance of *20 NVIDIA's May 2009 earnings announcement. (*See* GX 809, 815; *see also* GX 806 (Tortora writing that Kuo's source had "nailed rev and gaap gm to the decimal")). The e-mails in which Kuo shared Choi's tips--all of which Tortora forwarded to Newman--also reflected the internal consolidation process that only an insider with access to the company's financial numbers could know. (*See, e.g.*, GX 819 ("April quarter GM tracking to 30% . . . He won't know about the amount of inventory reserve charge, if any, until the end of the quarter"), 820 (providing "NVDA checks over the weekend, after the close of quarter"), 838 ("NVDA checks--final read before the print")).

The pattern and timing of Newman's trades confirmed that Newman understood he had access to material, nonpublic information. Knowing that the information about Dell's earnings came from corporate insiders and was inconsistent with market expectations, Newman made large investments in Dell securities based on the inside information. Before Newman received the Dell tips in 2008, he rarely, if ever, held a position in Dell securities at the time of its quarterly earnings announcements. Throughout 2008, however, as Goyal provided accurate information in advance of Dell's quarterly announcements, Newman made increasingly large investments in Dell securities. (GX 50 (450,000 shares as of May 29, 2008), 58 (800,000 shares short as of August 28, 2008), 67 (1.6 million shares as of November 20, 2008), 2501). In advance of Dell's August 2008 earnings announcement, Newman took the largest short position he had ever taken in a single stock during his time at Diamondback. (Tr. 3551-55; GX 8529A).

*21 Not only did Newman take large positions based on material, nonpublic information, but he also frequently traded within minutes of obtaining inside information on Dell and NVIDIA. For example, in advance of NVIDIA's May 2009 earnings announcement, Tortora forwarded to Newman Kuo's tip that gross margins would be 30 percent--significantly below the consensus expectation of 35 percent. (GX 818). Commenting that the gross margin number was "ugly," Newman asked whether Kuo was "good on gm." (GX 818). Tortora immediately confirmed that Kuo's source had "[n]ailed everything including gm last q." (GX 818). Two minutes later, Newman shorted NVIDIA's stock. (GX 2501). Newman similarly traded in Dell securities nearly immediately after receiving Dell tips in May and August of 2008. (GX 33, 50, 2501, 2501-DA).

b. Chiasson's Knowledge of the Breaches

Like Newman, Chiasson knew that his analyst, Adondakis, was providing him with nonpublic information that corporate insiders had improperly disclosed. Around May 2008, Adondakis learned that Tortora had access to an insider at Dell. (Tr. 1705, 1710). Tortora shared with Adondakis the inside information he got from his Dell source, and Adondakis passed the tips along to Chiasson, telling him that they came from a company insider. (Tr. 1708 (Adondakis testifying that he explained to Chiasson that Goyal used to work at Dell, obtained information from "someone within Dell," and provided the information to Tortora)).

*22 Chiasson acted immediately upon receiving inside tips on Dell from Adondakis, demonstrating that he knew the tips were reliable. Upon receiving positive inside information on Dell in early May 2008, Chiasson closed out a short position in the stock and started to build a long position. (Tr. 1712-15; GX 53, 402). After receiving an update from Tortora on May 12, Adondakis called Chiasson to share the information. (GX 31). That same day, Chiasson discussed the pricing of Dell call options with a Level Global trader, and purchased 3,500 such options. (GX 406, 2501). ¹¹ The following day, as Chiasson accumulated Dell securities, the trader informed Adondakis by e-mail that Chiasson "said he was waiting on one check from you on DELL . . . before buying much more." (GX 411). Three days later, on May 16, Adondakis received another update from Tortora; within 20 minutes, Chiasson purchased 750,000 shares of Dell stock. (GX 34, 2501). Based on the inside Dell tips Chiasson received in May 2008, Level Global reaped over \$4 million in illicit profits following Dell's May 29, 2008 quarterly earnings announcement. (GX 56).

¹¹ A call option gives the holder the right to buy a certain number of shares at a specified price by a certain date. Consistent with the positive tip Adondakis received in advance of Dell's May 29, 2008 earnings announcement, Chiasson's purchase of such options allowed him to take advantage of an increase in Dell's stock price following the announcement.

***23** In July and August of 2008, leading up to Dell's quarterly earnings announcement on August 28, Adondakis passed numerous tips on Dell to Chiasson. Recognizing the reliability of the information the Dell insider had provided the previous quarter, Chiasson initiated a short position immediately after learning in early July that Dell would likely miss market expectations on gross margins, and steadily built the position as the earnings announcement approached and he received additional updates from Adondakis confirming that gross margins would be below expectations. (Tr. 1736-42, 1749; GX 60, 319, 446, 584). On August 14, for example, Ray received by e-mail Dell's consolidated financial results for the quarter and shared the information with Goyal that evening; Goyal subsequently spoke to Tortora, who passed the information along to Adondakis on August 18. (GX 40, 1732). At the time, Adondakis was attending a conference in California with Chiasson and another Level Global employee. During the flight there, Adondakis had told Chiasson that he expected to receive through Goyal's contact the final "roll-up" of Dell's financial results before the company's quarterly announcement. (Tr. 1792). The very same day Adondakis received this tip, Chiasson instructed his trader to sell short additional Dell shares. (GX 469).

Then, a few days before the announcement, Chiasson sent an e-mail to Adondakis asking whether there had been "any chatter over the weekend" on Dell. (GX 505). On August 27, after receiving another update from Tortora, Adondakis convened a conference call with Chiasson and two other men, including David Ganek (Chiasson's co-founder of Level Global). ***24** (Tr. 1804-05; GX 523). During this call, Adondakis shared the update Tortora had given him on gross margins and other financial data, and Ganek instructed a trader to increase the firm's short position in Dell. (Tr. 1804, 1807-08; GX 528, 2501). ¹² Based on the inside tips on Dell, Level Global ultimately amassed a huge short position in advance of Dell's August 28, 2008 earnings announcement, earning nearly \$54 million in illegal profits when it liquidated the position after the earnings announcement. (GX 62, 64). This was the second largest short position the firm had ever taken. (DX 39).

¹² Ganek was aware that Adondakis received nonpublic information from a Dell insider during the consolidation process. On August 8, 2008, Ganek asked a Level Global trader whether Adondakis had heard "from his dell contact." (GX 438). The trader responded, "initial check was neg earlier in the week, next one is later next week I believe (not sure of exact timing), then one more right before the q[uar]ter]." (GX 438).

A series of e-mail and instant message exchanges between Chiasson and a friend at another hedge fund, Jeremy Yuster, demonstrated that Chiasson understood that only a Dell insider without authorization to disclose earnings information would have divulged Dell's gross margin numbers in advance of a quarterly announcement. After receiving a Dell update from Adondakis in August 2008 a few days after the quarter had ended, Chiasson reported to Yuster ***25** that he had "checks on gm [gross margin for Dell] this qtr [quarter]" indicating that gross margins would not be good, and that Chiasson was waiting for the "final read." (GX 448). In response to Yuster's question as to how Chiasson could have "checks on gm%," Chiasson wrote, "Not your concern. I just do." (GX 448). Subsequently, on August 18, after Chiasson received the "final" update from Adondakis, Chiasson confirmed the numbers with Yuster: "Gm 17.4--17.7." (GX 476). When Yuster questioned whether that was possible, Chiasson responded, "My view on gm more convicted than [yours]." (GX 477). ¹³

¹³ The day after Dell's quarterly announcement, a Level Global employee wrote to Chiasson that "we had that [Dell trade] nailed on conviction." (GX 549). Chiasson responded that, as to Dell, they had "1 guy used for 2 qtrs [quarters]," that is, he explained that a single Dell insider had provided tips for two successive quarters. (GX 549). Chiasson told yet another Level Global employee that the trade had been based on Adondakis's tips. (See GX 542 (in response to congratulations on the trade, Chiasson wrote, "Hit sam. Had a good read"))).

As for the NVIDIA tips, Adondakis told Chiasson that he got the information from a friend of Tortora's who, in turn, got it from a friend from church. (Tr. 1878). ¹⁴ As with Dell, Adondakis obtained and ***26** provided to Chiasson multiple updates on NVIDIA's earnings shortly before the company's quarterly announcement in May 2009. (GX 45-47). In an e-mail exchange between Chiasson and Ganek in late April, Chiasson stated that Adondakis expected he would "get a firmer read shortly" with

respect to the preliminary gross margin number Adondakis had received immediately before the end of the quarter. (GX 907). Adondakis received an updated “check” approximately one week later, indicating that NVIDIA's gross margins would not meet market expectations. (GX 927). Such tips could have come only from an insider.

¹⁴ Adondakis referred to the source as a “NVIDIA contact,” which, based on Adondakis's course of dealings with Chiasson, meant a company insider. (Tr. 1879). In this regard, Adondakis obtained inside information about other technology companies either from friends of his who had friends at the companies or through expert-networking firms. (See, e.g., GX 1618 (Chiasson, in an instant message, asking if Adondakis had established any “GOOD [] CONTAX” at a particular company through an expert networking firm, and Adondakis responding that he had “no mole in the organization yet”); Tr. 1678-91 (discussing contacts at Intel in 2007)).

Chiasson's conduct upon receiving the inside tips on NVIDIA from Adondakis showed that he knew the information was reliable. When Chiasson received a negative NVIDIA tip from Adondakis on April 27, 2009--ten days before the company announced its earnings--Chiasson held a long position in NVIDIA stock. (GX 920, 2501-LB). Chiasson immediately closed out the long position; after receiving an update on May 4, Chiasson caused Level Global to take a *27 large short position in NVIDIA stock. (GX 2501). The short trade resulted in over \$10 million in illicit gains when NVIDIA announced its earnings data on May 7. (GX 73).

Chiasson's efforts to conceal the true bases for the Dell and NVIDIA trades from Level Global's official reports further demonstrated that Chiasson knew he had received inside information that had been improperly disclosed. Level Global had an internal reporting system in which employees were supposed to record the basis for trades in order to provide transparency to investors. More than a month after Chiasson began shorting Dell stock based on the confidential information he obtained from the Dell insider, Chiasson directed Adondakis to create a bogus research report that did not include any information about the Dell contact as the basis for the trades. (Tr. 1785). He similarly instructed Adondakis to create a sham report for the NVIDIA trade in 2009 that omitted reference to the inside source. (GX 928 (email in which Chiasson told Adondakis to create a “Hi level trading template” for the NVIDIA trade)).

B. The Defense Case and the Verdict

Both defendants offered numerous documents during the cross-examination of Government witnesses. Additionally, Newman presented expert testimony concerning the size of the charged Dell and NVIDIA trades in comparison to the remainder of his portfolio. The defendants also called the case agent and questioned him about various consensually recorded telephone calls made at the direction of law enforcement *28 officers, as well as prior statements by the cooperating witnesses. (Tr. 3447-585).

Through their cross-examination of Government witnesses, the defendants sought to establish that Dell's investor relations personnel “leaked” earnings data that was similar to the information Ray disclosed. The evidence, however, belied that claim. Tortora testified that Lynn Tyson--Dell's head of investor relations at the time--never gave him the kind of detailed information concerning revenue and gross margins that he received from Goyal. (Tr. 342). In stark contrast to the specific gross margin and revenue numbers Ray disclosed, other members of Dell's investor relations team were willing to provide only general sentiments about Dell's business, such as “sound[ing] fairly confident on [gross margin] and [operating margin].” (DX 952). ¹⁵ As Tortora explained, *29 investor relations personnel and company management tended to comment only on the long-term view; unlike the tips regarding nonpublic financial data that Ray provided, this information could not be exploited to execute profitable trades around quarterly announcements. (Tr. 582-84).

¹⁵ The defendants claim--incorrectly--that Defense Exhibit 952 (an e-mail from Tortora to Newman recounting the substance of a telephone call with a Dell representative) is an example of Dell commenting on “soon-to-be-released industry data that would show poor results for Dell.” (Newman Br. 19; Chiasson Br. 15). In fact, what Tortora reported in this email was that Dell stated industry data would show “poor calendar q4 results due to *sep to oct* demand drop off.” (DX 952 (emphasis added)). As Tortora explained, at the time of this call--on December 15, 2008--Dell had already publicly released its earnings information for September and October

on November 20, 2008. (Tr. 595-96). As a Dell representative testified at trial, Dell investor relations personnel were trained to know what information was public or nonpublic, so they would not reveal nonpublic information before a quarterly announcement. (Tr. 2765, 2774).

The defendants attempted to demonstrate that Dell leaked current quarter earnings information by pointing to an April 2009 investor lunch with Lynn Tyson that Goyal attended. (See DX 994 (e-mail summarizing the discussion)). Newman distorts the record, however, by claiming that Tyson “*told* [the group of analysts] that Dell’s normalized gross margin would be 18% for the *current quarter*.” (Newman Br. 19 (emphasis added)). In fact, Goyal reported in the e-mail that Tyson “*implied* that *normalized* GM [gross margin] is near 18% levels.” (DX 994 (emphasis added)). Goyal explained at trial that the comment was a conclusion he reached based on Tyson’s comments and body language, and that the word “normalized” referred not to the current quarter, but to a longer-term outlook. (Tr. 1509, 1632).¹⁶

¹⁶ Newman also asserts that Dell leaked financial information by providing unit sales data to industry research services. (Newman Br. 20). This claim has no basis. These research services signed confidentiality agreements with Dell and released their reports to the entire market. (Tr. 2888-89). Moreover, Dell’s unit sale numbers were not nearly as helpful indicators of stock price movements around quarterly earnings announcements as the information Ray provided. (Tr. 321).

***30** The defendants’ claim that Dell leaked its financial results in advance of earnings announcements was most powerfully undermined at trial by the fact that Dell’s August 2008 announcement of its negative gross margin numbers shocked the market, resulting in a single-day decline in Dell’s stock price of nearly 14 percent. (GX 1842, 3003S). Throughout August 2008, analysts expected that Dell would report a gross margin number of 18.3 percent. (GX 3003S). As of early August, however, Dell’s internal numbers--which Ray disclosed to Goyal-- showed that Dell would report gross margins substantially below expectations. (GX 214). If Dell in fact leaked its financial performance data, market expectations would have adjusted accordingly and, more importantly, the price of Dell’s stock would not have dropped dramatically immediately following the announcement.¹⁷

¹⁷ In their appeal briefs, the defendants also rely on a handful of e-mails from the October 2008 quarter that contain blatant hearsay. (Newman Br. 18 (third bullet point, citing DX 798), 19 (first, second, and fourth bullet points, citing DX 866, 900, 957); Chiasson Br. 15-16). One such e-mail stated, “[a]pparently DELL IR saying offline that they will miss Oct est[imates] ‘by a country mile.’” (A. 2387; DX 798). The author of this e-mail did not testify, and there was no non-hearsay evidence that anyone on Dell’s investor relations team actually made this statement. Another e-mail attributed a disclosure about Dell’s earnings to Lynn Tyson, but, again, there was no non-hearsay evidence that she made any such disclosure. (DX 866). The District Court sustained the Government’s objection that these exhibits were not admissible for their truth. (Tr. 474-75). Indeed, even Newman’s counsel acknowledged that he was “not going to say [Investor Relations] actually did it,” that is, leaked the information. (Tr. 475). Instead, the Court admitted the e-mails merely to show that Newman was told certain information came from investor relations. (Tr. 474-75). The defendants thus should not be permitted to use these documents for their truth on appeal.

***31** Contrary to the evidence adduced at trial, the defendants also sought to show that NVIDIA leaked to analysts information concerning its financial performance. They pointed to a report of a meeting Adondakis had with the head of NVIDIA’s investor relations department on March 27, 2009, in which Adondakis commented that the department head “did not flinch” when asked about a sell-side analyst’s predictions for NVIDIA’s revenue. (A. 2419; Chiasson Br. 16). In that report, Adondakis recommended that Chiasson continue to build a long position in NVIDIA stock, believing (incorrectly) that gross margins would be “flattish.” (A. 2421). When Adondakis received an inside tip from Kuo a month later indicating ***32** worse than expected gross margins, however, Adondakis immediately told Chiasson to reverse course and short the stock, which Chiasson did, ultimately netting more than \$10 million on the trade. (GX 73, 816, 900).

On December 17, 2012, the jury returned its verdict, rejecting these defenses and finding Newman and Chiasson guilty on each of the counts in which they were charged.

C. The Sentencings

On May 2, 2013, the District Court sentenced Newman principally to an aggregate term of 54 months' imprisonment. On May 13, 2013, the Court sentenced Chiasson principally to an aggregate term of 78 months' imprisonment.

ARGUMENT

POINT I

The Jury Instructions Were Correct

Newman and Chiasson challenge three aspects of the jury instructions. Both defendants contend that the District Court should have instructed the jury that the Government was required to prove the defendants knew an insider disclosed information for a personal benefit. (Newman Br. 30-40; Chiasson Br. 21-52). Additionally, Newman argues that there was no factual predicate for a conscious avoidance instruction (Newman Br. 42-45), and that the Court *33 erred in defining “nonpublic” information (Newman Br. 45-46). Each of these claims is unavailing.¹⁸

¹⁸ In a footnote, Newman states that “[t]he district court's refusal to give jury instructions as requested by the defense stands in marked contrast to its willingness to interject itself into witness examinations, which ultimately inured to the benefit of the government.” (Newman Br. 42 n.23). This suggestion of bias is utterly lacking in basis, as demonstrated by the two examples upon which Newman relies. In an effort to blur the line between permissible immaterial statements and illegal tips, Newman's counsel asked Dell's corporate representative if the Chief Executive Officer could make “positive” comments before an earnings release; the Government objected to this vague question, and the Court properly sought to clarify it. (Tr. 2949). Subsequently, Newman's counsel incorrectly suggested to the jury, through his questioning of cooperating witness Hyung Lim, that the Government was required to prove that Lim knew Newman. In these circumstances, the Court's instruction clarifying the law of conspiracy was appropriate. (Tr. 3051-52). Newman's claim of unfairness is thus unfounded.

A. Applicable Law

This Court reviews jury instructions *de novo*. *United States v. Moran-Toala*, 726 F.3d 334, 344 (2d Cir. 2013). A defendant challenging a jury instruction must establish both that he requested a charge that “accurately represented the law in every respect” and *34 that the charge delivered was erroneous and caused him prejudice. *United States v. Wilkerson*, 361 F.3d 717, 732 (2d Cir. 2004). In considering whether there has been error, the reviewing court should consider the charge as a whole to determine if the jury was accurately advised as to the applicable law. *See United States v. Mitchell*, 328 F.3d 77, 82 (2d Cir. 2003). Moreover, a district court has “discretion to determine what language to use in instructing the jury as long as it adequately states the law,” *United States v. Alkins*, 925 F.2d 541, 550 (2d Cir. 1991), and a defendant “cannot dictate the precise language of the charge,” *United States v. Han*, 230 F.3d 560, 565 (2d Cir. 2000). Thus, if “the substance of a defendant's request[ed instruction] is given by the court in its own language, the defendant has no cause to complain.” *Id.* (internal quotations omitted).

An instructional error should be disregarded if the error is harmless. *See Fed. R. Crim. P. 52(a)* (“[a]ny error . . . which does not affect substantial rights shall be disregarded”); *United States v. Botti*, 711 F.3d 299, 308 (2d Cir. 2013). Such an error is harmless “if it is clear beyond a reasonable doubt that a rational jury would have found the defendant guilty absent the error.” *United States v. Botti*, 711 F.3d at 308 (internal citations and quotation marks omitted).

*35 B. Discussion

1. The Instruction on the Defendants' Knowledge of the Insiders' Breaches Was Correct

Newman and Chiasson each argue that the District Court erred in instructing the jury that it need find only that the defendants knew insiders disclosed material, nonpublic information in violation of a duty of confidentiality. They contend that the Court should have instructed the jury that the Government was also required to prove that they knew the insiders did so for some personal benefit. (Newman Br. 30-42; Chiasson Br. 20-52). They are mistaken. Neither the Supreme Court nor this Court has ever required the Government to establish such knowledge on the part of a tippee. Moreover, because the securities fraud statute's *mens rea* provision does not expressly apply to the benefit requirement (which requirement does not appear in the statute itself), the Government was required to prove knowledge of enough facts to distinguish conduct that is likely culpable from conduct that is entirely innocent. Establishing that the defendants traded on material, nonpublic information they knew insiders had disclosed in violation of a duty of confidentiality satisfied this requirement.

In any event, any instructional error was harmless. Having found that the defendants knew insiders disclosed inside information in breach of a duty (and not for any legitimate corporate purpose), the jury further would have concluded that the defendants inferred from the circumstances that the insiders did so *36 in return for some benefit. The defendants' claim should therefore be rejected.

a. Relevant Facts

During the charge conference, Newman's and Chiasson's counsel urged the District Court to instruct the jury that, in order to convict, it must find that the defendants knew an insider disclosed inside information for a personal benefit. (Tr. 3594-605). The Court disagreed, finding that, in *SEC v. Obus*, 693 F.3d 276 (2d Cir. 2012), this Court had made clear that the Government need prove only that “the tip[p]ee knew or had reason to know that the tip[p]ee improperly obtained the information . . . through the tipper's breach.” (Tr. 3604).

The District Court subsequently instructed the jury, in pertinent part, that in order to establish that the defendants were guilty of insider trading, the Government had to prove that (1) the tippers had a “fiduciary duty or other relationship of trust and confidence” with their employers such that they were “entrusted with material, nonpublic information with the reasonable expectation that they would keep it confidential and not use it for personal benefit” (Tr. 4029); (2) the tippers intentionally breached that duty by “disclosing material, nonpublic information for their own benefit” (Tr. 4030); (3) the tippers received a personal benefit from the tips (Tr. 4032-33); (4) the defendant tippees knew the inside information was disclosed by the insiders in breach of a duty of trust and confidence (Tr. 4033); and (5) the defendant tippees participated in the insider trading scheme *37 knowingly, willfully, and with specific intent to defraud (Tr. 4036). Specifically, the Court gave the following instructions on the tippers' intent and the personal benefit requirement:

Now, if you find that Mr. Ray and Mr. Choi had a fiduciary or other relationship of trust and confidence with their employers, then you must next consider whether the government has proven beyond a reasonable doubt that they intentionally breached that duty of trust and confidence by disclosing material, nonpublic information for their own benefit.

(Tr. 4030).¹⁹

¹⁹ The District Court defined “benefit” to include intangible benefits such as “maintaining a business contact” or “making a gift of confidential information to a trading relative or friend.” (Tr. 4032-33).

As to the defendant tippees, the District Court instructed the jury as follows:

To meet its burden, the government must also prove beyond a reasonable doubt that the Defendant you are considering knew that the material nonpublic information had been disclosed by the insider in breach of a duty of trust and confidence. The mere receipt of material, nonpublic information by a Defendant, and even

trading on that information, is not sufficient; he must have known that *38 it was originally disclosed by the insider in violation of a duty of confidentiality.

(Tr. 4033). The Court further instructed the jury that the Government was required to prove that the defendants “participated in . . . the insider trading scheme . . . knowingly, willfully, and with intent to defraud,” that is, that the defendants knew “of the fraudulent nature of the scheme and acted with the intent that it succeed.” (Tr. 4036-37). In doing so, the Court cautioned that:

It is not a willful deceptive device in contravention of the federal securities laws for a person to use his superior financial or expert analysis or his educated guesses or predictions or his past practice or experience to determine which securities to buy or sell. Nor is it a deceptive device in contravention of the federal securities laws for a person to buy or sell securities based on public information or on tips where he does not know that the information had been disclosed in violation of a duty of confidence, or where the information is obtained from permissible sources.

(Tr. 4036-37).

*39 b. Discussion

i. Tippee Liability Does Not Require Knowledge of a Personal Benefit

The question on this appeal is not whether tippees are prohibited from trading on material, nonpublic information they receive from company insiders. Nothing in the District Court's instructions would have permitted a conviction on that theory. Rather, as the jury found, both defendants traded on material, nonpublic information the defendants knew insiders had disclosed in violation of a duty to keep the information confidential. The narrow question presented here is whether the Government had to prove the defendants knew the insiders had disclosed the information not only in breach of a duty, but also for a personal benefit. Neither the Supreme Court nor any Court of Appeals has ever required such proof.

The Supreme Court addressed tippee liability in insider trading cases--and established the requirement that an insider-tipper is guilty of insider trading only if he disclosed confidential information to an outsider for a personal benefit--in *Dirks v. SEC*, 463 U.S. 646 (1983). *Dirks* was a first-level tippee who received information from an insider suggesting that management was committing fraud. *Dirks v. SEC*, 463 U.S. at 649. The tipper had notified various regulatory agencies of the fraud, but they failed to act; accordingly, he urged *Dirks* to verify the fraud and disclose it publicly. *Id.* *Dirks* conducted an investigation, and unsuccessfully sought to persuade a newspaper *40 to publish the allegations. *Id.* Although *Dirks* did not trade in the company's stock, he discussed his findings with clients and investors, some of whom did so. *Id.*

In finding that *Dirks* was not liable for insider trading, the Supreme Court held that tippees assume an insider's duty to the company's shareholders to disclose or abstain from trading in the company's stock if the inside information “has been made available to them *improperly*.” *Id.* at 660 (emphasis in original). In discussing the “improper” receipt of inside information, the Supreme Court did not adopt the position advocated by Newman and Chiasson, namely, that a tippee must know the tipper benefitted from the tip. Rather, notwithstanding its holding that a *tipper* must benefit from a disclosure in order to be liable for insider trading, *id.* at 662, the Supreme Court did not explicitly require that a *tippee* know about this benefit. Instead, the Court required only that the tippee know the tipper disclosed information in breach of a duty. *Id.* at 660. As the Court stated:

[A] tippee assumes a fiduciary duty to the shareholders of a corporation not to trade on material nonpublic information only when the insider has breached his or her fiduciary duty to the shareholders by disclosing the information to the tippee and the tippee knows or should know that there has been a breach.

Id.; see also *id.* at 661 n.19 (citing concurring opinion in *41 *In re Investors Management Co.*, 44 S.E.C. 633, 650 (1971), that a tippee can be held liable only if he received information in breach of an insider's duty not to disclose it).²⁰

²⁰ *Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299 (1985), upon which the defendants rely, is not to the contrary. (Newman Br. 33-34 n.16; Chiasson Br. 25-26). The issue in *Bateman* was whether the common-law *in pari delicto* defense bars a private damages action by tippees against tipsters who induced the tippees to invest in securities by misrepresenting that they were disclosing material, nonpublic information. *Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. at 301. The elements of tippee liability were not at issue in the case, and *Bateman* made no holding regarding tippee knowledge.

Following *Dirks*, this Court has never required the Government to prove that a tippee knew an insider who disclosed confidential information acted for a personal benefit, and the Government is aware of no decision from any other Court of Appeals imposing such a requirement. To the contrary, in *SEC v. Warde*, 151 F.3d 42 (2d Cir. 1998), this Court stated that the Securities and Exchange Commission ("SEC"), in order to establish a tippee's liability, was required to prove that (1) an insider possessed material, nonpublic information; (2) the insider disclosed such information to a tippee; (3) the tippee traded stock while in possession of that information; (4) the tippee knew the insider violated a relationship of *42 trust in disclosing the information; and (5) the insider benefitted by the disclosure, *id.* at 47.

Similarly, in *SEC v. Obus*, 693 F.3d 276, this Court did not require the SEC to prove that the tippees knew the insider had disclosed inside information for a personal benefit. In *Obus*, this Court considered whether the SEC had presented sufficient evidence to avoid summary judgment for the defendants (a tipster, an immediate tippee, and a successive tippee). In finding that it had done so and in rejecting the defendants' argument regarding the level of knowledge required on the tippee's part as to the tipster's breach, the Court summarized the elements of tipping liability as follows:

[W]e hold that tipper liability requires that (1) the tipper had a duty to keep material non-public information confidential; (2) the tipper breached that duty by intentionally or recklessly relaying the information to a tippee who could use the information in connection with securities trading; and (3) the tipper received a personal benefit from the tip. Tippee liability requires that (1) the tipper breached a duty by tipping confidential information; (2) the tippee knew or had reason to know that the tippee improperly obtained the information (*i.e.*, that the information was obtained through the tipper's breach); and (3) the tippee, while in knowing possession of the material non-public information, *43 used the information by trading or by tipping for his own benefit.

Obus, 693 F.3d at 289.

Most recently, in *United States v. Jiau*, --F.3d--, 2013 WL 5735348 (2d Cir. Oct. 23, 2013), this Court stated that, to hold a tippee criminally liable for insider trading, the Government must prove the following elements:

(1) the insider-tippers . . . were entrusted the duty to protect confidential information, which (2) they breached by disclosing to their tippee[], who (3) knew of their duty and (4) still used the information to trade a security or further tip the information for her benefit, and finally (5) the insider-tippers benefited in some way from their disclosure.

Id. at *3.

Indeed, *Jiau* is merely the most recent in a string of cases in which this Court has found that a tippee, in order to be criminally liable for insider trading, need know only that an insider-tipster disclosed information in breach of a duty of confidentiality. See *United States v. Libera*, 989 F.2d 596, 600 (2d Cir. 1993) (holding that requirements for tippee liability are "(i) a breach by the tipper of a duty owed to the owner of the nonpublic information; and (ii) the tippee's knowledge that the tipper had breached the

duty”); *United States v. Mylett*, 97 F.3d 663, 668 (2d Cir. 1996) (explaining that tippee defendants must “subjectively believe that the [inside] information was obtained *44 in breach of a fiduciary duty”); *United States v. Falcone*, 257 F.3d 226, 234 (2d Cir. 2001) (same). As for the benefit received by the tipper, however, this Court has held that the Government need prove only that there was such a benefit, but not that the tippee knew of it.

That the Government does not have to prove a tippee-defendant's knowledge as to each of the elements of tipper liability is not unusual. Many statutes have elements as to which the Government need not prove the defendant's knowledge. *See, e.g., United States v. Feola*, 420 U.S. 671, 684 (1975) (in prosecution for assaulting a federal officer, under 18 U.S.C. § 111, Government need not prove the defendant knew victim was a federal officer); *United States v. Griffith*, 284 F.3d 338, 350-51 (2d Cir. 2002) (holding that a prosecution under 18 U.S.C. § 2423 for transporting a minor in interstate commerce to engage in prostitution does not require proof of the defendant's knowledge of the victim's age); *United States v. Weintraub*, 273 F.3d 139, 147-51 (2d Cir. 2001) (holding that the scienter provision of criminal provision of the Clean Air Act, 42 U.S.C. § 7413(c)(1), required proof that the defendant knew asbestos was involved, but not the kind and quantity of asbestos that triggered the applicable regulation); *United States v. Figueroa*, 165 F.3d 111, 119 (2d Cir. 1998) (in prosecution under 8 U.S.C. § 1327 for assisting alien excludable for certain reasons to enter United States, Government must show defendant knew alien was excludable but not knowledge of particular grounds of excludability); *United States v. LaPorta*, 46 F.3d 152, 158-59 (2d Cir. 1994) (in prosecution for destruction of government *45 property under 18 U.S.C. § 1361 Government need not prove defendant knew owner of property); *United States v. Falu*, 776 F.2d 46, 49-50 (2d Cir. 1985) (holding that predecessor statute to 21 U.S.C. § 860 did not require proof that a defendant knew he was distributing a controlled substance within 1,000 feet of a school); *United States v. Roglieri*, 700 F.2d 883, 885 (2d Cir. 1983) (knowledge that stolen item came from the mail is not required under 18 U.S.C. § 1708); *United States v. Baker*, 693 F.2d 183, 185 86 (D.C. Cir. 1982) (18 U.S.C. § 641 does not require proof of knowledge that stolen property belonged to the government); *United States v. Mingoia*, 424 F.2d 710, 713 (2d Cir. 1970) (knowledge that stolen goods were transported in interstate commerce is not required by 18 U.S.C. § 2314).

Where the reach of a statute's *mens rea* requirement is ambiguous,²¹ this Court has “demand[ed] knowledge of enough facts to distinguish conduct that is likely culpable from conduct that is entirely innocent,” that is, “knowledge only of facts that in a reasonable person would create an expectation that his conduct was likely subject to strict regulation.” *United States v. Weintraub*, 273 F.3d at 147; *United States v. Sanders*, 211 F.3d 711, 723 (2d Cir. 2000) (“[I]t has become clear that knowledge may suffice for criminal culpability if ‘extensive enough to attribute *46 to the knower a ‘guilty mind,’ or knowledge that he or she is performing a wrongful act.’ ” (quoting *United States v. Figueroa*, 165 F.3d at 115-16)). “The touchstone is the defendant's ‘settled expectations’ about the regulated conduct.” *Weintraub*, 273 F.3d at 148 (citation omitted).

²¹ Here, because the securities fraud statute does not explicitly address insider trading, let alone mention benefit, the statute supplies little guidance as to the reach of its *mens rea* provision.

Trading securities based on information a defendant knows to be not only material and nonpublic, but also to have been disclosed by a company insider in violation of a duty to keep the information confidential is plainly wrongful conduct. No reasonable person would harbor a settled expectation that he is free to trade securities based on such information. Indeed, Level Global's compliance manual forbade employees from trading while in possession of any material, nonpublic information. (GX 1852 at LEVEL 000006667 (Level Global compliance manual stating that “[t]he Firm forbids any Employee to trade, either personally or on behalf of others, . . . while in possession of material non-public information” and that “Employees should assume that all information obtained in the course of their employment or association with the Firm is not public unless the information has been publicly disclosed by means of a press release, wire service, newspaper, proxy statement or prospectus or in a public filing made with a regulatory agency, or is otherwise available from public disclosure services”). And Diamondback's compliance manual defined material, nonpublic information to include information disclosed by a company insider in breach of a duty of confidentiality. (GX 2253 at F-3 (Diamondback compliance manual indicating that “material nonpublic information may include ‘tips’ *47 you receive directly or indirectly from a third party where you know, or should know, that the third party is disclosing the information improperly, in breach of *his or her* duty of confidentiality to the owner or source of the information” and instructing employees to contact “Legal/Compliance” upon receiving such information (italics in original))).

In these circumstances, there is no credible claim of surprise that trading on information knowingly obtained from an insider who had an obligation to keep it confidential was a wrongful act. See *In re Investors Management Co.*, 44 S.E.C. 633, at *11 n.2 (Comm'r Smith, concurring) (likening tippees to those who “knowingly receive stolen goods”).²²

²² These circumstances are entirely unlike those in *Dirks*, given that *Dirks* knew the insider was a whistleblower who sought to expose a fraud. *Dirks*, 463 U.S. at 649. The circumstances here are also unlike other situations the *Dirks* Court recognized would not lead to tippee liability, such as where it is unclear whether the information was either material to the stock's price or nonpublic. *Id.* at 662. The earnings information at issue here plainly was both material and nonpublic when the insiders disclosed it shortly before quarterly announcements.

In pressing a contrary conclusion, Newman and Chiasson emphasize that trading on material, nonpublic information from an insider is not, by itself, illegal. (See, e.g., Newman Br. 30; Chiasson Br. 21, 27). Of course, the jury instructions here did not permit the jury to convict based on such proof alone. To *48 the contrary, the District Court instructed the jury that, in order to convict, it must find that an insider breached a duty of confidentiality by “disclosing material, nonpublic information for their own benefit,” and that the defendants “knew that the material nonpublic information had been disclosed by the insider in breach of a duty of trust and confidence.” (Tr. 4029-30, 4033).

In this regard, Chiasson argues that the SEC's adoption of “Regulation Fair Disclosure” (“Regulation FD”) in 1999--which imposes on securities issuers an obligation to make prompt public disclosure of material, nonpublic information if the information is disclosed selectively by the issuer or someone acting on its behalf, see 17 C.F.R. § 243.100--somehow supports his claim that *Dirks* requires tippee knowledge of a benefit to the insider because people are not prohibited from trading on such selectively disclosed information. (Chiasson Br. 27-32). Regulation FD, adopted pursuant to Section 13(a) of the Exchange Act, addresses selective disclosures that were authorized by the issuer. It does not address unauthorized tips provided by insiders in violation of a duty of confidentiality to the company. See 17 C.F.R. § 243.100(a) (providing that where “an issuer, or any person acting on its behalf, discloses any material nonpublic information regarding that issuer or its securities” to certain specified people, “the issuer shall make public disclosure of that information”); *id.* § 243.101(c) (defining “[p]erson acting on behalf of an issuer” and stating that “[a]n officer, director, employee, or agent of an issuer who discloses material nonpublic information in breach of a duty of trust or *49 confidence to the issuer shall not be considered to be acting on behalf of the issuer”).²³ Here, the jury found that Newman and Chiasson knew insiders disclosed information in violation of a duty of confidentiality. Regulation FD is therefore inapposite.²⁴

²³ Indeed, the adopting release explicitly stated that Regulation FD “does not affect any existing grounds for liability under Rule 10b-5,” such as “liability for ‘tipping’ and insider trading.” *Selective Disclosure and Insider Trading*, 65 Fed. Reg. 51716-01, at *51726 (Aug. 24, 2000).

²⁴ Chiasson further relies on documents released by the SEC in connection with Regulation FD's promulgation in 1999 to bolster his unsupported claim that the selective disclosure of earnings numbers in advance of a quarterly announcement is common. (Chiasson Br. 28). Of course, there was no proof at trial that such selective disclosures are common. In any event, the studies cited in the SEC's release were commentaries on market practices in the late 1990s. See, e.g., *Selective Disclosure and Insider Trading*, 64 Fed. Reg. 72590-01, at *72592 n.11 (Dec. 28, 1999) (citing a 1998 study in which 26 percent of responding companies indicated they engaged in some type of selective disclosure). Chiasson appears to assume that practices a decade later--in 2008 and 2009--had not changed and that Regulation FD has had little impact in curbing selective disclosures. Chiasson, however, points to no evidence to support this assumption. To the contrary, the trial evidence showed that Dell and NVIDIA do not sanction such selective disclosures. (See, e.g., Tr. 2771-80).

*50 Newman and Chiasson further suggest that the benefit received (or anticipated) by the tipper is the fact that marks the difference between conduct that is wrongful and conduct that is innocent. (See, e.g., Newman Br. 35 n.17; Chiasson Br. 29). They thus contend the Government must prove a tippee's knowledge of the tipper's benefit, lest a defendant with an innocent mental state be convicted. For the reasons already given, this is incorrect.

In this regard, the defendants' reliance on *United States v. X-Citement Video, Inc.*, 513 U.S. 64, 73 (1994), and *Staples v. United States*, 511 U.S. 600, 615 (1994), is unavailing. (Neman Br. 34; Chiasson Br. 33). In *X-Citement Video, Inc.*, the Supreme Court interpreted a child pornography statute to require proof that the defendant knew the performers in a pornographic film were underage so as to ensure that the statute did not "sweep within [its] ambit . . . actors who had no idea that they were even dealing with sexually explicit material." *United States v. X-Citement Video, Inc.*, 513 U.S. at 69. In *Staples*, the Court held that a statute making it unlawful to possess a machinegun that is not properly registered required the Government to prove that the defendant knew the firearm was a machinegun (but not the gun's registration status), reasoning that, absent such proof, "the statute potentially would impose criminal sanctions on a class of persons whose mental state--ignorance of the characteristics of weapons in *51 their possession-- makes their actions entirely innocent" given the "common experience that owning a gun is usually licit and blameless conduct." *Staples v. United States*, 511 U.S. at 602, 608, 614-15.

Here, by contrast, there is no risk that the securities fraud statute would impose criminal penalties on people who reasonably believed they were engaged in blameless conduct, because the Government had to prove the defendants knew an insider-tipper disclosed material, nonpublic information in breach of a duty of trust and confidence. Trading securities based on nonpublic information disclosed by an insider in violation of such a duty "is easily sufficient to trigger an expectation of regulation in a reasonable person and to distinguish in his or her mind innocent from wrongful conduct." *Weintraub*, 273 F.3d at 149.

For similar reasons, Newman's and Chiasson's claim that the Government must prove a tippee knew of the tipper's benefit because the securities fraud statute imposes criminal liability only on defendants who act "willfully," 15 U.S.C. § 78ff(a), has no merit. (Newman Br. 35; Chiasson Br. 24 n.10, 32). Contrary to their contentions, Section 78ff(a) "do[es] not require a showing that a defendant had awareness of the general unlawfulness of his conduct, but rather that he had an awareness of the general wrongfulness of his conduct." *United States v. Kaiser*, 609 F.3d 556, 569 (2d Cir. 2010); *United States v. Dixon*, 536 F.2d 1388, 1395 (2d Cir. 1976) (Friendly, J.) (stating that a person can willfully violate the securities laws without knowing of their existence, and that "the prosecution need only establish a realization on the *52 defendant's part that he was doing a wrongful act" so long as the act is "wrongful under the securities laws" and "involves a significant risk of effecting the violation that has occurred" (citation and internal quotation marks omitted)); *United States v. Peltz*, 433 F.2d 48, 55-56 (2d Cir. 1970) (Friendly, J.) (same); see also *United States v. Tarallo*, 380 F.3d 1174, 1188 (9th Cir. 2004) ("Under our jurisprudence, then, 'willfully' as it is used in § 78ff(a) means intentionally undertaking an act that one knows to be wrongful; 'willfully' in this context does not require that the actor know specifically that the conduct was unlawful." (emphasis in original); cited favorably in *Kaiser*).²⁵

²⁵ In *United States v. Cassese*, 428 F.3d 92 (2d Cir. 2005), this Court stated that *Peltz* had held that "willfulness," as used in Section 78ff(a), means "a realization on the defendant's part that he was doing a wrongful act under the securities laws," *id.* at 98 (citation and internal quotation marks omitted). This characterization of *Peltz*'s holding was *dicta*, as the *Cassese* Court ruled that the Government had failed to prove that Cassese realized he was committing a wrongful act at all. This statement was also an inaccurate characterization of *Peltz*'s holding. As set forth in the text, and as this Court subsequently recognized in *Kaiser*, *Peltz* held that the willfulness requirement of Section 78ff(a) requires a showing that a defendant "had an awareness of the general wrongfulness of his conduct." *United States v. Kaiser*, 609 F.3d at 569; *United States v. Peltz*, 433 F.2d at 54-55 (holding that "[a] person can willfully violate an SEC rule even if he does not know if its existence" and that the Government need only establish that the defendant realized he was doing a wrongful act, so long as the act was in fact wrongful under the securities laws and "involve[d] a significant risk of effecting the violation that has occurred").

*53 Establishing that Newman and Chiasson understood their conduct was wrongful (and thus willful) required no more than showing that they traded on material, nonpublic information they knew insiders had disclosed in violation of a duty of confidentiality. Not only did the District Court instruct the jury that it could convict only upon such a finding, but it also instructed the jury that, in order to convict, it must find that the defendants acted both "with intent to defraud" and "with a bad purpose to disobey and disregard the law." (Tr. 4036-37). No more was required.

Nor is there any traction in Newman's claim--echoed by Chiasson--that "nearly thirty years of precedent in the Southern District of New York" has required the Government to prove a tippee's knowledge of the tipper's benefit. (Newman Br. 36; Chiasson Br. 26-27). To characterize a small handful of district court decisions as "nearly thirty years of precedent" is a substantial overstatement. This is particularly so given that, since 1993, this Court has repeatedly discussed the requirements for tippee liability and, in each case, stated that the Government need prove that the tippee knew only that the tipper had disclosed material, nonpublic information in breach of a duty of confidentiality. See *United States v. Jiau*, 2013 WL 5735348, at *3; *Obus*, 693 F.3d 289; *54 *United States v. Falcone*, 257 F.3d at 234; *SEC v. Warde*, 151 F.3d at 47; *United States v. Mylett*, 97 F.3d at 668; *United States v. Libera*, 989 F.2d at 600.

Neither Newman nor Chiasson so much as acknowledges *Warde*.²⁶ And they largely ignore *Falcone*, *Libera* and *Mylett*, other than to assert in footnotes that, before *Obus*, this Court had never required proof of a personal benefit received by the tipper in a misappropriation case. (Newman Br. 38 n.20; Chiasson Br. 39 n.13).²⁷ This is incorrect. See *SEC v. Materia*, 745 F.2d 197, 203 (2d Cir. 1984) (pre-*Obus* misappropriation case stating that insider must obtain "his own advantage" from misappropriated information); see also *United States v. O'Hagan*, 521 U.S. 642, 653-54 (1997) (stating that a misappropriator defrauds the principal by pretending loyalty while *55 converting the principal's information "for personal gain" (citation and internal quotation marks omitted)).

²⁶ At the time the defendants filed their briefs on appeal, this Court had not yet decided *United States v. Jiau*, 2013 WL 5735348.

²⁷ Under the misappropriation theory, "persons who are not corporate insiders but to whom material non-public information has been entrusted in confidence" are guilty of insider trading if they "breach a fiduciary duty to the source of the information to gain personal profit in the securities market." *Obus*, 693 F.3d at 284. Under the classical theory of insider trading, by contrast, "a corporate insider is prohibited from trading shares of that corporation based on material non-public information in violation of the duty of trust and confidence insiders owe to shareholders." *Id.*

In any event, that *Falcone*, *Mylett*, and *Libera* (and *Obus*, for that matter) were misappropriation cases does not undermine their force as precedent here. *Libera* cited *Dirks* as establishing the requirements for tippee liability, and did not interpret it to require that a tippee have knowledge of any benefit to the tipper. Indeed, this Court has explicitly recognized that, for purposes of tippee liability, there is no material difference between a classical insider-trading case and a misappropriation case. See *Obus*, 693 F.3d at 285-86 ("The Supreme Court's tipping liability doctrine was developed in a classical case, *Dirks* [], but the same analysis governs in a misappropriation case."). The defendants' attempt to distinguish these cases is particularly fruitless given that this Court has stated--in both civil and criminal classical insider trading cases--that the Government need prove that a tippee knew only that an insider-tipper disclosed material, nonpublic information in breach of a duty of trust and confidence. *Jiau*, 2013 WL 5735348, at *3; *Warde*, 151 F.3d at 47. Additionally, in claiming that a handful of district court cases support their position, the defendants ignore two district court cases that undermine their argument. See *SEC v. Thrasher*, 152 F. Supp. 2d 291, 304 (S.D.N.Y. 2001) ("The Plaintiff does not have to prove [] . . . that a remote tippee knew for certain how the initial breach of fiduciary duty occurred."); *SEC v. Musella*, 678 F. Supp. 1060 (S.D.N.Y. 1988) (granting summary judgment for the SEC, finding that there was *56 no issue of material fact regarding the defendants' scienter even though the defendants did not know who the insiders were).

Moreover, the reasoning of the district court decisions upon which the defendants rely is flawed. In the first of those decisions, *State Teachers Ret. Bd. v. Fluor Corp.*, 592 F. Supp. 592 (S.D.N.Y. 1984), the district court reasoned that *Dirks* required tippee knowledge "of each element [of tipper liability,] including the personal benefit," because, "[w]ere it otherwise, *Dirks*, in acknowledged possession of material inside information, would have been a tippee," *id.* at 594-95. This analysis was plainly incorrect. *Dirks* was not liable as a tippee because the insider-tipper was a whistleblower who did not receive any personal benefit. See *Dirks*, 463 U.S. at 666-67 (stating that the tipper did not violate any duty because he was "motivated by a desire to expose the fraud," and that there was thus "no derivative breach by *Dirks*"). Simply put, absent personal benefit to the insider-tipper, there is no tippee liability. The district courts in *United States v. Rajaratnam*, 802 F. Supp. 2d 491, 498-99 (S.D.N.Y.

2011), and *United States v. Santoro*, 647 F. Supp. 153, 170 (E.D.N.Y. 1986), merely followed *Fluor* without any additional analysis, and are accordingly based on the same flawed reading of *Dirks*.

As for *United States v. Whitman*, No. 12 Cr. 125 (JSR), 2012 WL 5505080 (S.D.N.Y. Nov. 19, 2012), the cornerstone of the district court's analysis was that the purpose of the *Dirks* classical theory of insider trading is "to protect shareholders against selfdealing *57 by an insider who exploits for his own gain the duty of confidentiality he owes to his company and its shareholders." *United States v. Whitman*, 2012 WL 5505080, at *5. That purpose is satisfied by requiring the Government to prove, as it did here, that an insider benefitted from the tip. Indeed, requiring proof that a successive tippee knew the insider benefitted would thwart this purpose by allowing tippees who knew of the insider's breach of duty--but not the benefit--to escape liability.²⁸

²⁸ The district court in *Whitman* also sought to distinguish contrary authority such as *Obus* and *Falcone* on the ground that they were misappropriation cases. As discussed in the text, however, there is no material distinction between classical and misappropriation cases for purposes of tippee liability.

Insofar as they address this Court's precedents setting forth the elements of tippee liability, Newman and Chiasson emphasize *Obus* and seek to distinguish it. They first contend that *Obus* is not controlling because the parties in the case did not argue that the defendants (including a successive tippee) had to know the tipper received a benefit. (Newman Br. 37-38; Chiasson Br. 37-38). The level of knowledge required on the tippee's part as to the tipper's breach, however, was squarely presented in *Obus*, and this Court held that the SEC had to show only that the successive tippee "knew or had reason to know" that the inside information "was obtained through a breach of fiduciary duty." *Obus*, 693 F.3d at 288. In so holding, this Court recognized that a lesser standard *58 of knowledge is required on the part of a tippee as to the circumstances of the tipper's breach of duty than is required for the act of trading on inside information. *See id.* Given the issue in dispute in *Obus*, its description of the requirements for tipping liability--including its conclusion that a tippee need know only that the tipper breached a duty of confidentiality-- governs here. *Cf. United States v. Goffer*, 721 F.3d 113, 124 (2d Cir. 2013) (citing *Obus* for the proposition that the Government must show a tippee either knew or should have known of the insider's breach of duty).

Newman further argues that *Obus* is not controlling because it was a civil case, and that criminal prosecutions for securities fraud require willfulness. (Newman Br. 38-39). As discussed above, however, the willfulness requirement of Section 78ff(a) requires only that a defendant "had an awareness of the general wrongfulness of his conduct." *Kaiser*, 609 F.3d at 569. This requirement was satisfied by the jury's finding that the defendants traded on material, nonpublic information they knew insiders had disclosed in breach of a duty of confidentiality.

In sum, the District Court properly instructed the jury that the Government was required to prove only that the defendants knew insiders had disclosed material, nonpublic information in breach of a duty of confidentiality, as this was all that was required to establish that the defendants knowingly engaged in wrongful conduct. This instruction was consistent with *Dirks* and this Court's precedent setting forth *59 the elements of tippee liability. Newman's and Chiasson's arguments to the contrary should be rejected.

ii. There Was No Due Process Violation

Relying on *State Teachers Ret. Bd. v. Fluor Corp.*, 592 F. Supp. 592, and the district court cases that followed it, both Newman and Chiasson further argue that the law was settled prior to *Obus* that a tippee is liable for insider trading only if he knew the insider-tipper acted for personal benefit, and contend that if *Obus* changed the law, its application here violates due process. (Newman Br. 39 n.21; Chiasson Br. 40). This claim is unavailing. For the reasons already given, the defendants had notice that by trading on information an insider had disclosed in violation of a duty of confidentiality, they were engaged in wrongful conduct. More importantly, as discussed above, *Obus* followed this Court's precedent in both classical and misappropriation

cases establishing that the Government need prove only that the tippee knew an insider disclosed information in breach of a duty of confidentiality.

iii. Any Error Was Harmless

Even if this Court were to conclude that the Government was required to prove the defendants knew the Dell and NVIDIA insiders received some benefit for disclosing inside information, any instructional error here was harmless. Given the jury's conclusion that Newman and Chiasson knew the insiders had provided inside tips in violation of a duty of confidentiality and in light of the nature and timing of those *60 tips--disclosures of earnings information shortly before quarterly announcements--the jury's verdict would have been the same absent the error. *See, e.g., Botti*, 711 F.3d at 308 (instructional error is harmless "if it is clear beyond a reasonable doubt that a rational jury would have found the defendant guilty absent the error" (internal citations and quotation marks omitted)).

At best for the defendants, the jury should have been instructed--as Judge Rakoff instructed the jury in *Whitman*--that "it is not necessary" that the defendants "know . . . the specific benefit given or anticipated by the insider in return for disclosure of inside information; rather, it is sufficient that the defendant[s] had a general understanding that the insider was improperly disclosing inside information for personal benefit." *Whitman*, 2012 WL 5505080, at *6. Moreover, Newman and Chiasson are incorrect in suggesting that, in order to establish knowledge of the insiders' benefits, the Government was required to prove that the defendants were explicitly told about those benefits. (Newman Br. 40; Chiasson Br. 44). Instead, the jury could find such knowledge by concluding that the defendants inferred from the circumstances that some benefit was provided to (or anticipated by) the insiders. *See United States v. Werner*, 160 F.2d 438, 441-42 (2d Cir. 1947) (Hand, J.) (holding that, to support a conviction for receipt of stolen goods, the evidence need establish only that the receiver "infer[red] the theft from the circumstances"); *United States v. Pabon-Cruz*, 255 F. Supp. 2d 200, 207-08 (S.D.N.Y. 2003) (Lynch, J.) (explaining that knowledge is established where the factfinder *61 "conclude [s] that the defendant believed" a fact, and "the circumstances were such that the defendant's belief was well supported and turned out to be accurate").

As recounted above, both defendants knew they were receiving material, nonpublic information from insiders at Dell and NVIDIA. (Tr. 160-61, 1708, 1878; GX 805). These tips included highly material information concerning Dell's and NVIDIA's financial performance, shortly before the companies made quarterly earnings announcements. (*See, e.g.*, GX 214 (August 5, 2008 e-mail from Tortora to Newman explaining that Dell would report gross margins of approximately 17.5 percent), 806 (e-mail documenting Choi's February 2009 tip regarding NVIDIA's revenues and gross margins in advance of quarterly announcement)). Moreover, the insiders provided multiple updates in the weeks leading up to the earnings announcements, as the companies consolidated their earnings data. (*See, e.g.*, GX 214 (e-mail dated August 5, 2008, concerning Dell and stating, "Q finished on fri, numbers still coming in"), 296 (e-mail concerning Dell in which Goyal wrote, "waiting for qtr to end or come closer so that numbers more firm"), 438 (e-mail from Level Global trader explaining, as to Adondakis's source on Dell, "initial check was neg earlier in the week, next one is later next week I believe (not sure of exact timing), then one more right before the q")). Given the nature, specificity, and timing of these disclosures, the jury had ample basis for its conclusion that Newman and Chiasson knew the insiders had disclosed the information "in breach of a duty of trust and confidence." (*See* Tr. 4033).

*62 Faced with this evidence, Newman and Chiasson contend that these tips could have been selective disclosures (*i.e.*, authorized leaks) carried out for purposes other than self-dealing. (Newman Br. 41; Chiasson Br. 46-47). The jury, however, rejected this selective-disclosure argument and found that the defendants knew the insiders disclosed the information in violation of a duty of confidentiality. It had good reason for doing so. The information provided by legitimate sources at Dell and NVIDIA was not specific and did not permit the defendants to trade around quarterly earnings announcements. The information these insiders provided, by contrast, allowed the defendants to execute highly profitable trades. And there was substantial evidence that the defendants knew their inside sources were not authorized to disclose the information:

- Newman knew Goyal obtained information from the Dell insider outside of business hours, at night and on the weekend. (*See, e.g.*, GX 322 (e-mail from Tortora to Newman stating that Goyal "usually wont hear back from [the Dell insider] til evening as calls him outside of work")). Newman also authorized substantial payments to Goyal for the tips, through a sham consulting

arrangement with Goyal's wife. (GX 2269, 2270). Had Goyal obtained the tips through a Dell insider who was authorized to disclose the information to investors, there would have been no reason to pay Goyal so much for the information.

*63 • Newman was told the NVIDIA source was an “accounting manager” at the company. (GX 805). Based on his extensive experience in the financial industry, Newman understood that such employees were not authorized to communicate with investors. Cf. *Obus*, 693 F.3d at 292-93 (stating that tippee was a “sophisticated financial analyst” who would know that nonpublic information about an acquisition would be material).²⁹

²⁹ Newman also believed (incorrectly) that Goyal's contact was not a member of Dell's investor relations department, which undermines his claim that he could have thought Goyal's contact was legitimately communicating information about Dell's earnings. (GX 242 (distinguishing Goyal's communications with investor relations from Goyal's “check” with “his guy”), 322 (referring to the fact that Goyal had a friend in investor relations who was someone other than Goyal's “main contact”)).

- Chiasson told a friend at another investment firm that he had “checks on gm” concerning Dell shortly before the company's August 2008 quarterly announcement. (GX 448). In response to the friend's question as to how Chiasson could have “checks on gm%,” Chiasson wrote, “Not your concern. I just do.” (GX 448). Chiasson's response demonstrated that he understood the Dell insider *64 was not authorized to disclose such information.

- Chiasson sought to conceal the bases for his Dell and NVIDIA trades from Level Global's internal reporting system, directing Adondakis to create sham reports reflecting false reasons for the trades. (Tr. 1785; GX 928).

This evidence demonstrated that Newman and Chiasson were well aware that the Dell and NVIDIA insiders had provided inside information without authorization.

Based on its well-supported finding that Newman and Chiasson knew insiders at Dell and NVIDIA had disclosed material, nonpublic information in violation of a duty of confidentiality (and not for a legitimate corporate purpose), the jury further would have found that the defendants inferred from the circumstances that some benefit was provided to (or anticipated by) the insiders. See *United States v. Werner*, 160 F.2d at 441-42; *United States v. Pabon-Cruz*, 255 F. Supp. 2d at 207-08. Given how the Supreme Court and this Court have defined benefit-- to include “a reputational benefit or the benefit one would obtain from simply making a gift of confidential information to a trading relative or friend,” *Obus*, 693 F.3d at 285 (citation and internal quotation marks omitted); see *id.* at 292 (stating that, although the SEC had to prove the insider obtained some benefit, “[i]n light of the broad definition of personal benefit set forth in *Dirks*, this bar is not a high one”)--the jury would have found that the defendants understood the insiders would *65 not have undertaken the highly risky step of disclosing earnings information shortly before a quarterly announcement unless they expected to receive something in return. Put differently, the jury would have concluded that the defendants knew insiders disclosed the information for some personal reason rather than for no reason at all. Cf. *Libera*, 989 F.2d at 600 (in a misappropriation case, stating that *tipper's* knowledge that he breached establishes his knowledge that the tippee will misuse the information because “it may be presumed that the tippee's interest in the information is, in contemporary jargon, not for nothing”). Alternatively, because the defendants' involvement in the offenses was so overwhelmingly suspicious, the jury would have found that if they did not know the insiders received (or expected to receive) some benefit in return for disclosing material, nonpublic information, it was only because the defendants deliberately avoided learning that fact. See Point I(B)(2), *infra*.³⁰

³⁰ For the same reasons that any instructional error was harmless, Newman and Chiasson are wrong that there was insufficient evidence to establish their knowledge of the insiders' benefits. (Newman Br. 40-42; Chiasson Br. 42-49). Accordingly, Newman's requests for a judgment of acquittal or a new trial and Chiasson's request for a remand with instructions to dismiss the Indictment should be rejected.

***66 2. The District Court Properly Instructed the Jury on Conscious Avoidance**

Newman next contends that there was an insufficient factual predicate to support a conscious avoidance instruction, arguing that there was no evidence he deliberately decided to avoid learning that information he received regarding Dell and NVIDIA was improperly obtained from company insiders. (Newman Br. 42-45). Newman is mistaken. His involvement in the criminal schemes was so suspicious that the jury could properly infer from his failure to question the circumstances of the tips that he purposefully contrived to avoid guilty knowledge.

a. Relevant Facts

Over the defendants' objections, the District Court instructed the jury on conscious avoidance as follows:

[A] Defendant's knowledge may be established by proof that the Defendant you are considering deliberately closed his eyes to what otherwise would have been obvious to him. If you find beyond a reasonable doubt that the Defendant's ignorance was solely and entirely the result of a conscious purpose to avoid learning the truth, then this element may be satisfied. However, guilty knowledge may not be established by demonstrating that the Defendant was merely negligent, foolish or mistaken.

If, for example, you find beyond a reasonable doubt that the Defendant you *67 are considering was aware that there was a high probability that he obtained information that had been disclosed in violation of a duty of trust and confidence, but deliberately and consciously avoided confirming this fact, then you may find that the defendant acted knowingly. However, if you find that the Defendant actually believed that the information he obtained was not disclosed in violation of a duty of trust and confidence, he may not be convicted. It is entirely up to you whether you find that the Defendant you are considering deliberately closed his eyes and any inferences to be drawn from the evidence on this issue.

(Tr. 4037-38).

b. Applicable Law

"A conscious-avoidance charge is appropriate when (a) the element of knowledge is in dispute, and (b) the evidence would permit a rational juror to conclude beyond a reasonable doubt that the defendant was aware of a high probability of the fact in dispute and consciously avoided confirming that fact." *United States v. Cuti*, 720 F.3d 453, 463 (2d Cir. 2013) (citation and internal quotation marks omitted). A conscious avoidance instruction "is not inappropriate merely because the government has primarily attempted to prove that the defendant had actual knowledge, while urging in the alternative that if the *68 defendant lacked such knowledge it was only because he had studiously sought to avoid knowing what was plain." *United States v. Hopkins*, 53 F.3d 533, 541 (2d Cir. 1995).

"[T]he same evidence that will raise an inference that the defendant had actual knowledge of the illegal conduct ordinarily will also raise an inference that the defendant was subjectively aware of a high probability of the existence of illegal conduct." *United States v. Svoboda*, 347 F.3d 471, 480 (2d Cir. 2003) (citation and internal quotation marks omitted); see also *United States v. Goffer*, 721 F.3d at 127 ("Red flags about the legitimacy of a transaction can be used to show both actual knowledge and conscious avoidance."). Thus, "the second prong [of the conscious avoidance test] may be established where[] a defendant's involvement in the criminal offense may have been *so overwhelmingly suspicious* that the defendant's failure to question the suspicious circumstances establishes the defendant's purposeful contrivance to avoid guilty knowledge." *United States v. Svoboda*, 347 F.3d at 480 (citation and internal quotation marks omitted; emphasis in original); *United States v. Cuti*, 720 F.3d at 463; *United States v. Kozeny*, 667 F.3d 122, 133-34 (2d Cir. 2011).

Moreover, "[i]t is not uncommon for a finding of conscious avoidance to be supported primarily by circumstantial evidence," as "the very nature of conscious avoidance makes it unlikely that the record will contain directly incriminating statements."

United States v. Kozeny, 667 F.3d at 134. Thus, “[a] conscious-avoidance instruction is appropriate when a *69 defendant claims to lack some specific aspect of knowledge necessary to conviction but where the evidence may be construed as deliberate ignorance.” *United States v. Gabriel*, 125 F.3d 89, 98 (2d Cir. 1997) (citation and internal quotation marks omitted).

c. Discussion

Newman disputed at trial that he knowingly received material, nonpublic information that corporate insiders at Dell and NVIDIA had disclosed in violation of a duty of confidentiality. He argued that he believed the information was the product of legitimate research or had been properly released by the companies. He did so in opening statement (*see, e.g.*, Tr. 68 (stating that Newman “hired Jesse Tortora . . . to do honest legitimate research, and honest research is exactly what he thought he was getting”), in cross-examining certain Government witnesses (*see, e.g.*, Tr. 723-24 (suggesting that Dell's investor relations team prematurely leaked quarterly results)), and in summation (*see, e.g.*, Tr. 3766 (“[W]hen Newman sees specific numbers, he doesn't think that must come from an improper or illegal source.”), 3767 (arguing that when Newman received specific numbers, he did not “assume . . . that is inside information, that is improper and that is from an unauthorized source at the company”))). The first prerequisite for a conscious avoidance instruction--that the defendant assert “the lack of some specific aspect of knowledge required for conviction--was therefore satisfied here. *See United States v. Aina-Marshall*, 336 F.3d 167, 171 (2d Cir. 2003).

*70 The second prerequisite for the instruction was also met. Contrary to Newman's claim, there was ample evidence from which a rational juror could have concluded that Newman was aware of a high probability that he received tips from Dell and NVIDIA insiders who disclosed the information in violation of a duty of trust and confidence, but deliberately avoided confirming that fact. The evidence from which the jury could have reached this conclusion included the following:

- Tortora told Newman that his source at Dell had access to the internal consolidation process (Tr. 160-61), and that the NVIDIA insider was an accounting manager at the company (GX 805);
- Newman received specific tips concerning Dell's and NVIDIA's revenues and gross margins before the information was publicly announced, which information Newman--a sophisticated hedge fund manager--knew was confidential;
- Newman received multiple, frequent tips of such information during Dell's and NVIDIA's consolidation processes leading up to multiple quarterly earnings announcements;
- Newman knew that Goyal communicated with his “contact” at Dell at night and on the weekend (GX 197, 242, 322); and
- Newman paid Goyal a substantial sum for the Dell tips.

*71 In short, the information Tortora provided to Newman was so overwhelmingly suspicious that the jury could reasonably conclude that if Newman did not know he was receiving confidential information disclosed by insiders in breach of a duty of confidentiality, it was only because he purposely avoided confirming that fact. *See Goffer*, 721 F.3d at 124; *Cuti*, 720 F.3d at 463; *Kozeny*, 667 F.3d at 134; *Svoboda*, 347 F.3d at 480.

In pressing a contrary position, Newman relies on *Global-Tech Appliances, Inc. v. SEB S.A.*, 131 S. Ct. 2060, 2071-72 (2011), to argue that the standard set forth in *Svoboda*, *Kozeny*, and *Cuti* was erroneous. (Newman Br. 44). Under this Court's controlling precedents, however, where a defendant's involvement in an offense was “so overwhelmingly suspicious,” a jury is entitled to infer that any lack of actual knowledge on the defendant's part is attributable to the defendant's deliberate decision to avoid confirming a disputed fact. *Svoboda*, 347 F.3d at 480 (citation, internal quotation marks, and emphasis omitted); *Cuti*, 720 F.3d at 463; *Kozeny*, 667 F.3d at 133-34. The Supreme Court in *Global-Tech*--a civil patent case--did not purport to undermine these precedents or set forth a new standard for conscious avoidance. Indeed, this Court recently held that *Global-Tech* “did not alter the conscious avoidance standard.” *Goffer*, 721 F.3d at 128.

In this regard, Newman contends there was no evidence that he deliberately avoided confirming any facts and ample evidence that he asked Tortora questions regarding the reliability and accuracy of the information *72 Tortora provided. (Newman Br. 43). Obviously, Newman could ask certain questions to confirm the reliability and accuracy of the information and at the same time deliberately avoid asking others that would confirm that insiders were improperly disclosing confidential information. Indeed, the jury could reasonably infer that Newman asked some questions but not others as part of an effort to avoid such knowledge. The jury could thus properly find that by failing to question the overwhelmingly suspicious tips Tortora provided, Newman purposefully avoided confirming that the information came from insiders in breach of a duty.

Newman also argues that the circumstances here were not “overwhelmingly suspicious” because, among other reasons, he received much of the information from Tortora via his office e-mail account, which he contends “could be read by the compliance department and the SEC.” (Newman Br. 44). Contrary to this claim, receiving multiple, specific updates from an insider in anticipation of a quarterly earnings announcement is highly suspicious. That Newman received the information via e-mail makes it no less suspicious, particularly given that Newman instructed Tortora not to be explicit in e-mails about the insiders' access to information and that Diamondback's compliance office conducted only limited reviews of e-mails. (Tr. 530, 1313-15). Newman's decision to use e-mail reflects his assessment of the probability that his illicit behavior would be detected, but in no way suggests that the circumstances were not highly suspicious.

***73 3. The Instruction on Nonpublic Information Was Correct**

Newman further contends that the District Court erred in its instruction defining “nonpublic” information. He argues that the Court failed to provide the jury with adequate guidance in determining whether the information he received regarding Dell and NVIDIA was “truly confidential.” (Newman Br. 45-46). This claim is unavailing. The concepts contained in Newman's proposed instruction were adequately conveyed by the charge that was given, which reflected the defense theory. Moreover, the instruction Newman argues should have been given applies in misappropriation cases to aid the jury in finding whether allegedly misappropriated information was confidential and, as a result, a type of property. The Court's instruction on nonpublic information, by contrast, closely tracked the instruction approved in *United States v. Contorinis*, 692 F.3d 136, 142-44 (2d Cir. 2012). In any event, given the overwhelming evidence that Dell and NVIDIA took all appropriate steps to ensure the confidentiality of their earnings information, any error was harmless.

a. Relevant Facts

Before trial, the defendants jointly submitted requests to charge, including a proposed addition to the District Court's draft instruction defining “nonpublic” information. (A. 206-07). The defendants asked that the following language be added to the draft charge:

[I]n considering whether corporate information is non-public, you must consider *74 what steps the corporation has taken to maintain and protect confidentiality. The factors will vary, but may include written company policies, employee training, measures the employer has taken to guard the information's secrecy, the extent to which the information is known outside the employer's place of business and the ways in which other employees may access and use the information. Even if a corporation “considers” information to be confidential, if that corporation does not take affirmative steps to treat it as such, particularly when the corporation is alerted to the possibility that it is being disclosed or at risk of being disclosed, then the information is “available” to the public.

(A. 206-07).

Commenting that “the instruction I have covers this,” the District Court declined to add the defendants' proposed language. (Tr. 3610). The Court, consistent with its draft instruction, subsequently defined “nonpublic” information for the jury as follows:

Information is nonpublic if it is not available to the public through sources such as press releases, Securities and Exchange Commission filings, trade publications, analysts' reports, newspapers, magazines, television, radio, rumors word of mouth, websites, internet chat rooms, or online message boards. In *75 assessing whether information is nonpublic, the keyword is “available.” If information is available in the public media or in SEC filings, it is public. However, the fact that information has not appeared in the newspaper or other widely available public medium does not alone determine whether the information is nonpublic. Sometimes a corporation authorizes the release of information or is otherwise willing to make information available to securities analysts, prospective investors, or members of the press who ask for it even though it may never have appeared in any newspaper or other publication. Such information would be public. Accordingly, information is not necessarily nonpublic simply because there has been no formal announcement or because only a few people have been made aware of it. Whether information is nonpublic is an issue of fact for you to decide.

(Tr. 4031).

b. Discussion

Newman argues that because he contended at trial that Dell and NVIDIA regularly disclosed the kind of information he received through company insiders, the District Court erred in refusing to give his proposed instruction regarding the steps a company takes to maintain confidentiality. (Newman Br. 45). *76 The Court's charge, however, addressed such disclosures, instructing the jury that information released by a company to certain analysts or investors, even if not disseminated through a widely available public medium, is public information. (Tr. 4031 (“[T]he fact that information has not appeared in the newspaper or other widely available public medium does not alone determine whether the information is nonpublic. Sometimes a corporation authorizes the release of information or is otherwise willing to make information available to securities analysts, prospective investors, or members of the press who ask for it even though it may never have appeared in any newspaper or other publication. Such information would be public.”)). This instruction adequately represented the defense theory that Dell and NVIDIA leaked earnings information to analysts by making clear that if, in fact, those companies authorized the disclosure of certain information, such information was public and could properly be used in executing trades.

Moreover, the District Court's instruction on nonpublic information was materially indistinguishable from the instruction approved in *United States v. Contorinis*, 692 F.3d at 142-44. Because the instruction adequately defined “nonpublic” information, the Court did not err in declining to use the defendants' proposed language. See, e.g., *United States v. Coplan*, 703 F.3d 46, 87 (2d Cir. 2012) (“Although a defendant is entitled to have the court charge the jury on any defense theory for which a foundation existed in the record, he is not necessarily entitled to have that instruction communicated to the jury in the language of his choice.” (alteration, citation, and internal quotation *77 marks omitted)); *United States v. Wexler*, 522 F.3d 194, 205 (2d Cir. 2008) (“A defendant is not entitled to prescribe the exact language of a jury instruction, and the charge is sufficient if it adequately appr[ises] the jury of the crime and offense.” (internal quotations omitted)); *United States v. Alkins*, 925 F.2d at 550 (“A court has discretion to determine what language to use in instructing the jury as long as it adequately states the law.”).

In arguing that the instruction was erroneous, Newman relies solely on *United States v. Mahaffy*, 693 F.3d 113 (2d Cir. 2012).³¹ That reliance is misplaced. The defendants in *Mahaffy* were stockbrokers employed by various brokerage firms, who were charged with misappropriating those firms' confidential business information by disclosing information concerning pending orders for blocks of securities (which orders were broadcast over an internal communication system known as “squawk boxes”) to traders at another firm; those traders then placed trades in the securities before the brokerage firms executed their customers' orders. *United States v. Mahaffy*, 693 F.3d at 119-20. In order to establish that the pending orders were a form of property that the defendants had stolen, the Government was required to prove that the orders were confidential. *Id.* at 118, 120 (citing *Carpenter v. United States*, 484 U.S. 19 (1987)).

31 Similarly, the defendants cited only *Mahaffy* in support of their proposed instruction. (A. 207).

*78 Having vacated the convictions based on violations of *Brady v. Maryland*, 373 U.S. 83 (1963), this Court stated that the Supreme Court in *Carpenter* “require[d] proof that [] information was both considered and treated by an employer in a way that maintained the employer’s exclusive right to the information” for the Government to establish a property right in information sufficient to support a misappropriation charge. *Mahaffy*, 693 F.3d at 135 n.14. In that context, this Court instructed district courts to provide guidance to juries in misappropriation cases “regarding how to evaluate whether employers treat information as confidential,” and set forth a list of “pertinent factors” juries could be instructed to consider. *Id.*

Newman’s proposed instruction closely tracked this discussion in *Mahaffy*. Because this discussion addressed how to evaluate whether information qualifies as property in misappropriation cases, the District Court did not err in declining to give Newman’s requested instruction. This is particularly so given that this Court in *Contorinis* approved an instruction on nonpublic information materially indistinguishable from the instruction given here.

In any event, even if the District Court somehow erred in declining to give the requested instruction, any such error was harmless in light of the extensive evidence that both Dell and NVIDIA treated nonpublic earnings information as highly confidential prior to its announcement. As the Government proved at trial, (1) both Dell and NVIDIA restricted access to earnings information prior to its public release *79 (Tr. 2816, 3095-96); (2) both companies had policies prohibiting the disclosure of earnings information to outsiders, and both corporate insiders signed confidentiality agreements with their employers (GX 1659, 1957; Tr. 2758, 3098-101, 3103); and (3) Ray, as a member of Dell’s investor relations team, received training on Dell’s confidentiality policy and how to respond to investors’ questions without disclosing confidential information (Tr. 2774-75, 2823-27). *Cf. Mahaffy* 693 F.3d at 121-122 (firms did not train brokers on the proper use of squawks, firms had no policy specifically addressing how employees should treat squawks, and squawks were broadcast throughout the firms’ offices, including in areas where nonemployees were visiting). Given the ample evidence that Dell and NVIDIA took affirmative steps to maintain the confidentiality of their earnings information before its public release, any error in the Court’s refusal to give the defendants’ requested instruction was harmless.

POINT II

There Was Sufficient Evidence that the Dell and NVIDIA Insiders Breached a Duty for a Personal Benefit

Newman claims that the evidence at trial was insufficient to support the jury’s verdict. (Newman Br. 47-52). Specifically, he argues that the Government failed to prove that the Dell and NVIDIA insiders--Rob Ray and Chris Choi, respectively--intentionally breached duties they owed their employers. (Newman Br. 47-48). He further contends *80 that there was insufficient evidence that either insider received a personal benefit. (Newman Br. 49-52). For the reasons set forth below, both claims are unavailing.

A. Applicable Law

A defendant challenging the sufficiency of the evidence bears a “heavy burden,” *United States v. Gaskin*, 364 F.3d 438, 459 (2d Cir. 2004), as the standard of review is “exceedingly deferential,” *United States v. Hassan*, 578 F.3d 108, 126 (2d Cir. 2008). Specifically, the Court “must view the evidence in the light most favorable to the government, crediting every inference that could have been drawn in the government’s favor, and deferring to the jury’s assessment of witness credibility and its assessment of the weight of the evidence.” *United States v. Chavez*, 549 F.3d 119, 124 (2d Cir. 2008) (citations, brackets, and internal quotation marks omitted). Moreover, a reviewing court must “consider the evidence in its totality, not in isolation.” *United States v. Autuori*, 212 F.3d 105, 114 (2d Cir. 2000). A conviction must therefore be affirmed if “any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 319 (1979).

***81 B. Discussion**

1. There Was Sufficient Evidence that the Insiders Intentionally Breached a Duty of Confidentiality

Newman's claim that the Government failed to prove Ray intentionally breached a duty to Dell has no force. (Newman Br. 47-48). In eight straight quarters, Ray disclosed Dell's financial data to Goyal before the information was publicly announced, providing multiple updates during the internal consolidation process. He provided precise information concerning Dell's revenues and gross margins, typically during telephone calls with Goyal at night or on the weekend. (*See, e.g.*, GX 26, 27, 214, 257, 600A; Tr. 1631). Ray did so even though he was never authorized to disclose Dell's nonpublic financial information to outsiders, Dell's policies strictly prohibited such disclosures, and Ray was specifically warned not to reveal Dell's financial results before the company announced its earnings in May and August of 2008. (Tr. 2766-68, 2780-81, 2807; GX 1712, 1730). Based on this evidence, the jury could properly conclude that, in providing tips to Goyal, Ray intentionally breached his duty of confidentiality to Dell.

Faced with this evidence, Newman contends that there was insufficient proof of an intentional breach because Goyal "affirmatively misled" Ray to believe that Goyal was not trading on the tips and was merely working on a model. (Newman Br. 47). Of course, Goyal's use of Ray's information in models that formed the basis of stock recommendations he made *82 to portfolio managers was improper. In any event, the jury was entitled to find that Ray knew perfectly well--regardless of what Goyal told him--that Goyal wanted Dell's current financial information in advance of quarterly earnings announcements in order to trade on the information. Such a conclusion was plainly warranted, given that Goyal repeatedly requested updates on Dell's financial data shortly before quarterly announcements, when such information was highly relevant to executing profitable trades.³² As this Court has noted, "it may be presumed that the tippee's interest in the information is, in contemporary jargon, not for nothing." *Libera*, 989 F.2d at 600.

³² In this regard, Newman emphasizes that Goyal did not tell Ray that he was sharing Ray's tips with analysts at other firms. This fact is irrelevant, as the Government was not required to prove that Ray knew the full extent of Goyal's intended use of the inside information in order to establish that Ray knowingly breached a duty to Dell.

Newman further claims that the Government failed to prove an intentional breach on Ray's part because Dell did not prohibit investor relations personnel from assisting analysts with models and speaking to them at night. (Newman Br. 47). Newman fails to acknowledge, however, that Dell permitted its investor relations team to help analysts with models pertaining only to historical data and prohibited them from disclosing current quarter earnings numbers before their public release. (Tr. 2926). More *83 over, the jury could properly rely on the fact that Ray spoke to Goyal almost exclusively at night and on weekends--while Goyal spoke to a different member of Dell's investor relations team during business hours--in concluding that Ray intentionally breached his duty to Dell.

Additionally, Newman argues that the purported evidence of leaks by Dell "undermined any inference that advance disclosure of quarterly results was such a serious infraction so as to imply a knowing breach." (Newman Br. 47). As set forth above, the evidence did not show that Dell leaked earnings numbers before they were publicly announced. Moreover, Ray received training on how to communicate with investors without disclosing confidential financial data, and was explicitly warned in advance of Dell's May and August 2008 announcements not to disclose current quarter information. (*See, e.g.*, GX 1712 (the head of Dell's investor relations warning that she would "hunt . . . down" anyone who "breath[ed] a peep" of the results)). The jury had ample basis for concluding that Ray intentionally breached a duty in disclosing nonpublic financial information--including revenue and gross margin data--shortly before its public announcement.

Newman's claim that there was insufficient evidence that Choi intentionally breached a duty to NVIDIA similarly lacks traction. (Newman Br. 48). Choi repeatedly disclosed nonpublic information concerning NVIDIA's financial results in advance of the company's quarterly earnings announcements. Before NVIDIA's quarterly announcements in February and *84 April of 2009,

for example, Choi disclosed the company's revenues and gross margins. (See GX 806, 820). Choi did so even though NVIDIA prohibited such disclosures, Choi had signed a confidentiality agreement, and Choi was not authorized to speak to investors. (GX 1953; Tr. 3098-103). The jury was entitled to rely on this evidence and find that, in disclosing confidential financial information shortly before quarterly earnings announcements, Choi intentionally breached a duty he owed NVIDIA.

As to both Ray and Choi, Newman emphasizes that the Government has not charged either man, and claims that this fact shows there was insufficient proof of an intentional breach. (Newman Br. 47-48). Of course, the Government's charging decisions have no bearing on the sufficiency of the trial evidence demonstrating that Ray and Choi intentionally breached duties they owed their employers. Nor is there any basis for Newman's completely unfounded assertion that the Government considers both insiders to lack culpability. (Newman Br. 47-48 (asserting that the absence of charges against Ray is "a telling indication of the government's view of his culpability")). Indeed, based on extensive evidence of Ray's and Choi's wrongdoing, the Government argued at trial--and the jury found--that both men intentionally breached their duties of confidentiality. That finding should not be disturbed.

***85 2. There Was Sufficient Evidence that the Insiders Received Personal Benefits**

Contrary to Newman's contention, the evidence was sufficient to establish that Ray benefitted from his tips of inside information to Goyal. Not only were the two men friends, but Goyal provided Ray with career advice and assistance. While Goyal did not view Ray as a "close" friend (Tr. 1411), the men had known each other for years, having both attended business school and worked at Dell together (Tr. 1469-70). Moreover, they knew each other's wives, talked about going on vacation together, and spoke frequently, often for long periods of time, late at night while each of them was at home. (Tr. 1469-70). Additionally, Ray--who wanted to become a Wall Street analyst like Goyal-- benefitted from the tips by receiving career advice and assistance from Goyal. (See, e.g., GX 700 (Ray writing to Goyal, "As you know, I am extremely interested in the equity research area and it will be great to get some perspective from you.")). Goyal provided advice, reviewed Ray's résumé, sent Ray's résumé to a Wall Street recruiter, and "put in a good word" for Ray with a potential employer. (GX 703, 705, 708, 720, 725, 729, 729B, 720, 733; Tr. 1396-1403). On occasion, Goyal even provided career advice in the very same conversation during which Ray gave him inside information on Dell. (See, e.g., Tr. 1461; GX 39, 734). Based on this evidence, the jury could properly conclude that Ray received personal benefits for providing inside information to Goyal.

In urging a contrary conclusion, Newman emphasizes Goyal's testimony that the men were not "close" *86 friends. (Newman Br. 50). The Government, however, was not required to prove a particularly intimate friendship in order to establish that Ray received a benefit. See *Obus*, 693 F.3d at 292 (stating that the SEC had to prove tipper derived some benefit from tip, but that, "[i]n light of the broad definition of personal benefit set forth in *Dirks*, this bar is not a high one"). The Government merely had to prove a friendship such that the tip resembled trading by Ray followed by a tip of the profits to Goyal. See *Warde*, 151 F.3d at 48-49. The jury could permissibly reach that conclusion based on Goyal's description of his relationship with Ray, including his testimony that the men discussed taking family vacations together.³³ In *87 any event, the career advice Goyal provided Ray was an independent basis for the jury's conclusion that Ray benefitted from his tips to Goyal.

33

In support of his argument that the relationship between Ray and Goyal did not support an inference that Ray benefitted from his tips to Goyal, Newman relies on *SEC v. Maxwell*, 341 F.Supp.2d 941 (S.D. Ohio 2004), and *SEC v. Anton*, No. 06-2274, 2009 WL 1109324 (E.D. Pa. Apr. 23, 2009). (Newman Br. 49). Neither case is comparable to this one. In *Maxwell*, the court found that a one-off tip from a corporate executive to his barber--in the absence of a close friendship, family relationship, or business association--provided an inadequate basis for finding any benefit to the tipper. *SEC v. Maxwell*, 341 F.Supp.2d at 947-48. And *Anton* involved a single tip from a corporate insider to a financial analyst who was not a friend and with whom the tipper "could not recall spending any social time." *SEC v. Anton*, 2009 WL 1109324, at *1 n.3. Assuming that these cases were correctly decided--and the Government does not concede that they were--Ray's relationship with Goyal did not resemble the relationships at issue in either case.

That Goyal began giving Ray career advice some time before Ray supplied Goyal with inside information on Dell was insignificant. (Newman Br. 50). In September 2007--shortly before Ray began disclosing Dell's consolidated earnings numbers

to Goyal--Ray told Goyal he was “*desperately* looking to break into the buy/sell side.” (GX 708 (emphasis added)). The jury could reasonably conclude that Goyal's advice and assistance to Ray during this period was materially different from any prior guidance Goyal had provided Ray, and that Goyal's assistance to Ray in this regard was a personal benefit.

Newman further contends that the career assistance Goyal provided Ray “amounted to routine and ultimately ineffective courtesies,” and thus did not qualify as a benefit. (Newman Br. 50). The premise of this argument is incorrect. Goyal need not have succeeded in obtaining employment for Ray in order to have provided him with a benefit. The jury was entitled to find that Goyal's assistance to Ray--which included providing advice, reviewing Ray's résumé, sending it to a Wall Street recruiter, and recommending *88 Ray to a potential employer--was a meaningful benefit. Cf. *Jiau*, 2013 WL 5735348, at *4 (holding that the Government proved benefit by showing insider-tipper joined tippee's investment club, which gave the insider opportunities to access inside information, even though the insider did not in fact receive tips through the club).

Nor is there any force to Newman's assertion that Goyal's career advice was not a benefit because “Goyal would have given the advice even without receiving the information.” (Newman Br. 51). Even if true, this would not undermine the jury's verdict, as the jury nonetheless properly could have concluded that Ray provided inside information in return for Goyal's assistance. Cf. *United States v. Quinn*, 359 F.3d 666, 675 (4th Cir. 2004) (holding, in a bribery case, that “it does not matter whether the government official would have to change his or her conduct to satisfy the payor's expectations”). In any event, Newman's assertion is undermined by Goyal's testimony that he had more frequent and lengthier telephone calls with Ray than with other people (Tr. 1515), and that he had such lengthy and frequent calls with Ray because Diamondback was paying him for the information Ray provided (Tr. 1630).

Newman also argues that there was insufficient evidence that Ray received a benefit for the inside information he provided because Ray never explicitly “connected the career advice as a *quid pro quo*” to the tips. (Newman Br. 51). No such explicit agreement was required. Cf. *United States v. Garcia*, 992 F.2d 409, 414 (2d Cir. 1993) (holding, in a bribery case, *89 that a “*quid pro quo* [need not be stated] in express terms, for otherwise the law's effect could be frustrated by knowing winks and nods” (citation and internal quotation marks omitted)). The jury could reasonably infer from the evidence--including the proof that Ray and Goyal swapped career advice for inside information in the same telephone call (GX 39, 734; Tr. 1461)--that the men had implicitly reached such an agreement.

The jury also had ample basis for finding that Choi disclosed inside information concerning NVIDIA to Lim in return for a personal benefit, namely, friendship. Lim described Choi as a “family friend” he had known for years, and the men attended church and socialized together. (Tr. 3032-33). Newman all but ignores this friendship, and insists there was insufficient proof of a benefit because Lim testified he never gave Choi “anything of value in exchange for information.” (Newman Br. 51). The Government, however, was not required to show that Lim gave Choi cash or gifts for inside information. The jury was entitled to find that, in light of the friendship between Choi and Lim, Choi received a benefit by tipping Lim. See *Warde*, 151 F.3d at 48-49 (finding benefit to the tipper based on friendship between tipper and tippee, because tip resembled trading by tipper followed by a gift of profits to the recipient). Newman argues that the jury could not properly reach this conclusion, because Choi did not know Lim was trading NVIDIA stock and Lim did not trade the stock between April and July of 2009. (Newman Br. 51). He is mistaken. Lim told Choi that he traded NVIDIA stock, and he in fact traded the stock in March, April, *90 July, and August of 2009. (Tr. 3044, 3083; GX 3510-6 at 2-3). He also passed the information to another analyst, Kuo, in exchange for cash and gifts. (Tr. 3010, 3039, 3042). In any event, as discussed above, that Choi knew he was breaching a duty in disclosing information to Lim “suffice[d] to establish [Choi's] expectation that the breach w[ould] lead to some kind of a misuse of the information.” *Libera*, 989 F.2d at 600. Thus, contrary to Newman's claims, Choi's tips resembled “trading by the insider himself followed by a gift of the profits to the recipient.” *Dirks*, 463 U.S. at 664.

In sum, the evidence was sufficient to support the jury's conclusion that the Dell and NVIDIA insiders disclosed inside information in breach of a duty and for a benefit. Newman's challenges to the sufficiency of the evidence should therefore be rejected.

POINT III

There Was No Prejudicial Variance as to Count Two

Newman next contends that the proof at trial regarding inside tips he received in advance of Dell's May 2008 earnings announcement constituted a prejudicial variance from the allegations in Count Two of the Indictment. (Newman Br. 52-55). Newman raised no such complaint in the proceedings below, and his claim is therefore subject to review solely for plain error. Newman's claim would fail under any standard of review, because the evidence at trial did not prove facts materially different from those alleged in Count Two and because, even if there were a variance, *91 Newman was on notice of it through the exhibits and witness statements provided to him in advance of trial.

A. Applicable Law

"A variance occurs when the charging terms of the indictment are left unaltered, but the evidence offered at trial proves facts materially different from those alleged in the indictment." *United States v. Salmonese*, 352 F.2d 608, 621 (2d Cir. 2003) (citation and internal quotation marks omitted). This Court "has consistently permitted significant flexibility in proof, provided that the defendant was given notice of the core of criminality to be proven at trial." *United States v. Heimann*, 705 F.2d 662, 666 (2d Cir. 1983) (citation and internal quotation marks omitted).

"A defendant alleging variance must show 'substantial prejudice' to warrant reversal." *United States v. Rigas*, 490 F.3d 208, 226 (2d Cir. 2007) (quoting *United States v. McDermott*, 918 F.2d 319, 326 (2d Cir. 1990)). A variance is prejudicial only when it "infringes on the 'substantial rights' that indictments exist to protect--to inform an accused of the charges against him so that he may prepare his defense and to avoid double jeopardy." *United States v. Dupre*, 462 F.3d 131, 141 (2d Cir. 2006) (citation and internal quotation marks omitted); see also *United States v. Mucciante*, 21 F.3d 1228, 1236 (2d Cir. 1994) ("A variance is immaterial--and hence not prejudicial-- where the allegation and proof substantially correspond, where the variance is not of a character that could have misled the defendant at the trial, and *92 where the variance is not such as to deprive the accused of his right to be protected against another prosecution for the same offense." (citation and internal quotation marks omitted)).

B. Relevant Facts

The speaking allegations in the Indictment described an insider-trading scheme in which Jesse Tortora--an analyst at Diamondback--obtained inside information from employees of publicly traded technology companies both directly and through a network of corrupt analysts at other hedge funds. (A. 149-50). This information related to, among other things, the companies' earnings, revenues, and gross margins. (A. 150). The Indictment alleged that Tortora passed such inside information to Newman, who used it to execute securities trades. (A. 150).

The Indictment provided specific details about trades based on inside information in connection with two quarterly earnings announcements by Dell in 2008 and one such announcement by NVIDIA in 2009. (A. 153-55, 156-57). As to Dell's May 2008 earnings announcement (which is the subject of Count Two), the Indictment alleged that a Dell insider had disclosed "Inside Information concerning Dell's financial results for the quarter ended May 2, 2008," and that the "Inside Information indicated, among other things, that gross margins would be higher than market expectations." (A. 153). The Indictment further alleged that, based on this information, Newman bought 475,000 shares of Dell stock in advance of the earnings announcement. (A. 153, 163).

*93 The evidence at trial established that, in advance of Dell's quarterly earnings announcement in May 2008, the Dell insider provided multiple updates on Dell's financial results to Goyal, which tips Goyal shared with Tortora. (See GX 26). Tortora, in turn, provided the information to Newman and other corrupt analysts. (GX 29, 30, 31, 32, 33, 34, 2604, 2607). The cooperating witnesses did not remember precisely which metrics the Dell insider had provided for the May 2008 quarter, but each of them

recalled that the information led to the conclusion that Dell's earnings per share would beat market expectations. (Tr. 179, 1451, 2463).³⁴

³⁴ Goyal believed he had received information from Ray regarding revenues and margins (Tr. 1451); Tortora recalled that he had received Dell's revenue information and either its gross margins or operating margin (Tr. 179, 788); and Adondakis recalled receiving revenue information but not margins (Tr. 2464).

Documentary evidence provided to the defendants six weeks in advance of trial (in accordance with the District Court's order regarding the production of marked Government exhibits) showed that the defendants received information in advance of Dell's quarterly announcement that Dell's earnings would beat market expectations. One of the corrupt analysts spoke to Tortora regarding Dell on May 12, 2008, and took notes of the conversation. Those notes indicated that, as of May 12, Dell would report revenues of \$15.8 billion (which was one percent greater than market expectations at the time), gross margins of *94 "18.5-18.6%" (which was slightly better than the current market expectations of 18.5 percent), and operating expenses of 13 percent. (GX 600A). A few days later, after another update from the Dell insider, Goyal and Tortora used the information he had provided to calculate an earnings per share ("EPS") number of 36 to 37 cents, which exceeded market expectations of 33 cents per share. (GX 187; Tr. 197).³⁵

³⁵ As Tortora explained, Goyal did not provide Dell's EPS number; Tortora calculated that number using other metrics Goyal had given him, such as revenues, gross margins, operating margins, and expenses. (Tr. 147, 198).

On May 16--the very same day Tortora confirmed that Dell's EPS would beat market expectations by three to four cents--Newman took a large long position in Dell stock. (GX 2501-DA). Only hours before Dell announced its earnings on May 29, following an additional update on Dell, Newman purchased additional shares. (GX 2501-DA).³⁶ While no documentary evidence records precisely what information Tortora conveyed to Newman on May 29, the information was *95 obviously positive, given that Newman increased his Dell holdings after speaking to Tortora.

³⁶ Telephone records showed that (1) Ray and Goyal spoke on the evening of May 28, (2) Goyal called Tortora later that same evening, and (3) Tortora called Newman at 7:48 a.m. the next morning. (GX 25, 2606, 2607, 2610). Newman purchased the 220,000 additional shares between 9:32 a.m. and 12:48 p.m. that day. When Dell announced its earnings shortly after 4:00 p.m., Newman held a total of 450,000 shares. (GX 2501-DA).

Dell ultimately reported revenues and operating margins that beat consensus projections, with the result that Dell's EPS number was 38 cents per share. (GX 1803; Tr. 834). Gross margins, however, were slightly below market expectations. (GX 1723; DX 8228). As Newman had correctly predicted based on the inside information he had received, Dell's stock price increased following the earnings announcement. (GX 1842 (showing stock price increase of five percent within one day of the announcement)).

C. Discussion

Contrary to Newman's claim, there was no variance at all here, let alone a prejudicial variance. While it may have been preferable for the Indictment to allege that Dell's financial results generally would beat expectations in May 2008 without highlighting gross margins, the allegation was not limited to margins. The Indictment alleged, among other things, that Newman received inside information regarding Dell's quarterly financial results in advance of the company's quarterly announcement in May 2008. (A. 153). As Newman himself acknowledges, the Indictment's allegation that the tips included gross margin numbers was merely illustrative of the information that was disclosed. (A. 153 (alleging that the "Inside Information indicated, among other things, that gross margins would be higher than market expectations"); Newman Br. 52 n.25 (conceding that the language of the Indictment was not limited to tips *96 concerning gross margins and "leaves room for other parameters")). Indeed, the thrust of the allegation was that Newman received inside information that Dell's financial results would exceed market

expectations, leading him to purchase a large volume of Dell stock so that he could capitalize on the rise in stock price following the announcement of those results. The proof at trial was consistent with--and certainly not materially different from--these allegations.

The trial evidence established that, in May 2008, Goyal received multiple tips from a Dell insider concerning the company's financial results for the preceding quarter and shared that information with Tortora, who, in turn, passed it along to Newman. The tips included information regarding revenues and operating expenses, in addition to gross margins. (See GX 600A). Newman emphasizes that while the Indictment alleged a tip that gross margins would exceed expectations, gross margins were ultimately lower than analysts' projections. (Newman Br. 52). The inside tip Tortora received on May 12, 2008, however, showed that revenues, gross margins, and operating expenses all would beat market projections. (See GX 600A). That Dell's gross margin numbers were subsequently revised downward during the consolidation process does not establish a variance. (See GX 1712A (showing gross margins of 18.5 to 18.6 percent as of May 12, consistent with the tip)). The evidence established that Newman received inside tips regarding Dell's quarterly financial results-- including its gross margins--in advance of the company's May 2008 earnings announcement, just as the Indictment alleged.

***97** Even if the Indictment's allegation that the inside information regarding Dell's quarterly financial results included, "among other things, that gross margins would be higher than market expectations" could somehow be interpreted as different from the evidence presented at trial, Newman has fallen far short of demonstrating that any such variance resulted in substantial prejudice. (A. 153). This Court has held that "[a] variance is immaterial--and hence not prejudicial--where the allegation and proof substantially correspond, where the variance is not of a character that could have misled the defendant at the trial, and where the variance is not such as to deprive the accused of his right to be protected against another prosecution for the same offense." *United States v. LaSpina*, 299 F.3d 165, 183 (2d Cir. 2002) (internal quotation marks omitted). Newman does not assert that the purported variance would impede his ability to avoid double jeopardy. Instead, he claims that he was surprised by what he contends was a shift in the Government's theory at trial. (Newman Br. 54).

Newman's claim of surprise has no traction. As discussed, the Indictment put him on notice that the Government intended to prove he received inside tips in advance of Dell's May 2008 quarterly announcement that the company's financial results would beat market expectations, leading him to take a substantial long position in Dell stock. Moreover, the Government produced marked exhibits to him six weeks before the trial began. Those exhibits included a record of the tip provided in mid-May indicating that Dell's revenues, gross margins, and operating expenses would all exceed market projections. ***98** (GX 600A). The exhibits also included an e-mail between Tortora and Goyal--which was both quoted and discussed at length in the criminal complaint filed against the defendants--reflecting the Government's theory that the inside information Newman obtained was, on the whole, positive. (GX 187 (e-mail indicating that Dell's EPS would beat market expectations by several cents per share)). See *United States v. Dupre*, 426 F.3d at 141-42 (variance not prejudicial where there was no claim of surprise because Government had produced documents containing evidence presented at trial well in advance of trial).

Perhaps the most powerful proof that Newman was not in fact surprised by the theory the Government pursued at trial was his own counsel's comments in opening statement. At the outset of the trial, even though the Government had not mentioned the May 2008 tips in its opening statement, Newman's counsel twice described the Government's theory as being that Newman received inside information that month that Dell would report positive results in its quarterly announcement. (Tr. 87 (stating that Count Two alleged that "Newman bought 475,000 shares of Dell because he had been given inside information, according to the [Government], that Dell would report positive results a few weeks later on May 29"), 88 (describing "May 16" as "when the government says [Newman] got inside information telling him he knew that the company[, that is, Dell,] was going to report positively")). As these comments demonstrate, Newman well understood the Government's theory as to the May 2008 Dell tips and was ***99** not surprised at trial when the Government did not limit its proof to tips regarding gross margins.

Newman further asserts that the claimed prejudice was "particularly severe" because the District Court did not allow him to "fully explor[e] the inconsistencies in the government's allegations." (Newman Br. 54-55). Specifically, he contends that the District Court improperly prevented him from (1) seeking to refresh the cooperating witnesses' recollections, using the

Indictment, as to whether they had told the Government they received tips in May 2008 related to gross margins; and (2) questioning the case agent about the criminal complaint he signed, which stated that Tortora received gross margin information in advance of Dell's May 2008 earnings announcement. These complaints regarding restrictions on Newman's examination of certain witnesses have no bearing on his claim of prejudicial variance, given this Court's precedent that a variance is prejudicial only when it "infringes on the 'substantial rights' that indictments exist to protect--to inform an accused of the charges against him so that he may prepare his defense and to avoid double jeopardy." *Dupre*, 462 F.3d at 141 (citation and internal quotation marks omitted). The complaints have no merit in any event.

Although Newman claims that the District Court prohibited him from showing three cooperating witnesses the Indictment "to refresh their memories" as to whether they had previously told the Government that, in May 2008, they received inside information related to gross margins, this is not what happened at trial. Newman's counsel did not ask to show *100 Tortora the Indictment. Instead, after confirming with Tortora on cross-examination that Tortora did not recall which "financial performance line items" he had received that quarter, Newman proposed to read aloud to the jury a paragraph from the Indictment in order to put the testimony "in context." (Tr. 826-27). The Court did not abuse its discretion in precluding Newman's counsel from doing so and directing him instead to "[a]sk [the witness] questions." (Tr. 827). See *Fed. R. Evid. 611(a)*; cf. *United States v. Polizzi*, 500 F.2d 856, 876 (9th Cir. 1974) ("The decision to read the indictment to the jury is within the sound discretion of the trial court.").

Moreover, Newman fails to acknowledge that the District Court allowed him to attempt to refresh Goyal's and Adondakis's recollections on this very point with the informations containing the charges to which each of them had pleaded guilty. (Tr. 1571-72, 2463-67, 3431-32). In any event, it would not have been an abuse of discretion for the Court to prevent Newman from attempting to refresh the cooperating witnesses' recollections with the Indictment (had he sought to do so), given that it was a legal document based on a composite of information obtained from various sources and that Newman could have sought to refresh their memories with their own prior statements, as documented by the Government. See *Berkovich v. Hicks*, 922 F.2d 1018, 1025 (2d Cir. 1991) ("A trial judge has broad discretion to organize or limit the use of evidence to refresh recollection." (citation and internal quotation marks omitted)).

*101 Nor is there any force to Newman's claim that the District Court abused its discretion in preventing him from questioning the case agent about the allegation in the criminal complaint that Dell's gross margins would beat market expectations. As Newman's counsel explained at trial, he sought to ask the case agent whether Goyal and Tortora were the source of this information in order to impeach them with a prior inconsistent statement. (Tr. 3432-37). The Court correctly found that there was no inconsistency between the witnesses' testimony and any prior statements they had made, because they had each testified that they did not recall what type of financial information they had received concerning Dell in May 2008. (Tr. 3437; see also Tr. 178-79 (Tortora testifying that he did not remember "the specific details of the line items" he received on Dell in May 2008), 788-89 (Tortora testifying on cross-examination that he was not certain whether he had received gross margin information on Dell in May 2008), 1571 (Goyal testifying on cross-examination that he did not recall what information he had received on Dell in May 2008)).

In any event, even if Newman's counsel had identified a prior inconsistent statement, he could not offer extrinsic evidence of any such statement under *Rule 613(b) of the Federal Rules of Evidence* without giving either Tortora or Goyal "an opportunity to explain or deny the statement," *Fed. R. Evid. 613(b)*, which he failed to do. In these circumstances, the District Court cannot be said to have abused its discretion. See *United States v. Strother*, 49 F.3d 869, 874-75 (2d Cir. 1995) ("We review a district court's *102 determination of whether statements are inconsistent with each other for an abuse of discretion.").

In sum, there was no variance here, prejudicial or otherwise. Newman's claim should therefore be rejected.

POINT IV

Chiasson's Sentence Was Reasonable

Chiasson challenges his sentence of 78 months' imprisonment as both procedurally and substantively unreasonable. (Chiasson Br. 53-70). He contends that his sentence was procedurally unreasonable because the District Court included in its calculation of gain the illicit profits generated not only by Chiasson's own trades on behalf of Level Global, but also the trades made by Level Global's other co-founder, David Ganek, who the Court found was a co-conspirator. Contrary to Chiasson's claim, that finding was not clearly erroneous, and the inclusion of Ganek's trades in the gain calculation was therefore proper. Moreover, Chiasson's further argument that his sentence was substantively unreasonable because the Court placed undue emphasis on gain and failed to account for unwarranted sentencing disparities also lacks merit. Chiasson's sentence--which was substantially below the applicable Guidelines range--was reasonable.

A. Relevant Facts

In advance of Chiasson's sentencing, the Probation Office prepared a Presentence Report. In calculating ^{*103} the applicable range under the United States Sentencing Guidelines ("U.S.S.G." or the "Guidelines"), the Probation Office determined that Chiasson was responsible for unlawful trading gains of approximately \$40 million. (PSR ¶¶ 32, 36, 41, 42, 51).³⁷ Accordingly, the Probation Office concluded that Chiasson's total offense level was 30, that he fell within Criminal History Category I, and that his Guidelines range was 97 to 121 months' imprisonment. (PSR ¶ 93). The Probation Office recommended a sentence of 97 months' imprisonment. (PSR at 28-29, Sentencing Recommendation).

³⁷ Although the actual trading gains realized by Level Global were in excess of \$50 million, the Probation Office utilized the same "24-hour rule" that the District Court had applied at Newman's sentencing, and calculated insider trading gains based on the stock price 24 hours after the public announcement of the inside information, on the assumption that the information was fully embedded in the stock price by that time.

In his sentencing submission, Chiasson challenged the Probation Office's Guidelines calculation, arguing that the trading gains should be limited to trades executed by Chiasson himself. (A. 2574-77). Chiasson further requested that the District Court grant a "substantial downward variance" from the Guidelines range. (A. 2578). Chiasson's submission included an extensive discussion of other insider-trading defendants and their sentences, arguing that a substantially below-Guidelines sentence was necessary to avoid ^{*104} unwarranted sentencing disparities. (A. 2579-92). Chiasson also argued that such a sentence was warranted because of Chiasson's personal history and family circumstances; the Guidelines' emphasis on profits; and the aberrational nature of Chiasson's criminal conduct. (A. 2592-607).

In its sentencing submission, the Government advocated for a sentence within the Guidelines range of 97 to 121 months' imprisonment, noting the extraordinary scope of the conspiracy, Chiasson's role in it, and the enormous trading gains realized by Chiasson and his co-conspirators at Level Global. (A. 2777-93). With respect to the Guidelines calculation, the Government argued that the calculation of gains should include not only trades Chiasson executed himself, but also trades directed by co-conspirator David Ganek, who had co-founded Level Global with Chiasson. (A. 2796-97). On that point, the Government argued that to the extent Ganek had directed some of the trades at issue, he and Chiasson had been acting in concert with one another. (The District Court had previously made a finding at trial by a preponderance of the evidence that Ganek was also a member of the conspiracy, as discussed in Point V, *infra*.)

On May 13, 2013, the parties appeared before the District Court for sentencing. The Court first addressed the Guidelines calculation, noting that the principal dispute between the parties was whether to include trades at Level Global that were directed by Ganek. (A. 2880-81). Chiasson argued that he should be treated similarly as certain downstream tippees in an unrelated case, ^{*105} *United States v. Goffer*, 10 Cr. 56 (RJS), where the tippee defendants were held responsible for the profits resulting from their own trades and not those of co-conspirators. (A. 2881-83). The Government countered that the two cases were not factually analogous, as the tippee-defendants in *Goffer* worked at different firms and traded independently of one another; in

contrast, the trades at Level Global, whether directed by Ganek or Chiasson, were all part of a single trade built up over time--namely, a short of Dell stock based on inside information Adondakis had obtained indirectly from inside Dell. (A. 2883-88). The Court agreed with the Government largely for the reasons set forth in its sentencing submission and found, consistent with the Presentence Report, that the gain attributable to Chiasson was more than \$20 million, resulting in a Guidelines range of 97 to 121 months. (A. 2888).

The District Court next identified the different factors it was required to consider under [Section 3553\(a\) of Title 18, United States Code](#), in determining an appropriate sentence, including the need to avoid unwarranted sentencing disparities among similarly situated defendants, and then heard from both parties. (A. 2888-91). Chiasson's counsel requested that the Court show leniency based on Chiasson's personal history and the sentences imposed on other insider trading defendants. (A. 2912-20). The Government reiterated its view of the seriousness of the offense. (A. 2920-21).

The District Court then discussed the application of the various [Section 3553\(a\)](#) factors. With respect to the circumstances of the offense, the Court commented *106 that the criminal conduct took place over a "long period of time" and "wasn't just one error in judgment" because "[i]t was repeated over multiple months and even years." (A. 2927). The Court also noted that the incentives for Chiasson to commit the crime should have been greatly diminished since he was a wealthy individual earning more than \$10 million a year. (A. 2927). The Court agreed that Chiasson was less culpable than certain other insider trading defendants, like Zvi Goffer, who received a sentence of 120 months' imprisonment. (A. 2930). At the same time, the Court remarked that Chiasson had engaged in efforts to conceal his criminal conduct and that the size of the illegal profits was extraordinary. (A. 2930-31). The Court explained that "the size of the bet matters and the size of the gains matter. I think that they should be discounted to some extent. I agree with [counsel for Chiasson], they shouldn't be the only thing that matters, but they do matter." (A. 2931). Balancing all the different factors, the Court concluded that a sentence of 78 months' imprisonment was warranted.

B. Applicable Law

1. Appellate Review of Sentences

Appellate review of a district court's sentence "encompasses two components: procedural review and substantive review." [United States v. Cavera](#), 550 F.3d 180, 189 (2d Cir. 2008) (en banc); see generally [United States v. Booker](#), 543 U.S. 220 (2005); [United States v. Crosby](#), 397 F.3d 103 (2d Cir. 2005). A district court "commits procedural error where it fails to *107 calculate the Guidelines range (unless the omission of the calculation is justified), makes a mistake in its Guidelines calculation, [] treats the Guidelines as mandatory[,]. . . does not consider the [Section 3553\(a\)](#) factors, or rests its sentence on a clearly erroneous finding of fact." [United States v. Cavera](#), 550 F.3d at 190 (internal citations omitted); see also [Gall v. United States](#), 552 U.S. 38, 51 (2007).

If the Court determines that there was no procedural error, it "should then consider the substantive reasonableness of the sentence imposed under an abuse-of-discretion standard." [Gall v. United States](#), 552 U.S. at 51. In applying that standard, the Court must "take into account the totality of the circumstances, giving due deference to the sentencing judge's exercise of discretion and bearing in mind the institutional advantages of district courts." [Cavera](#), 550 F.3d at 190; see also [United States v. Fernandez](#), 443 F.3d 19, 26 (2d Cir. 2006). The Court has elaborated on the definition of substantive reasonableness and, in doing so, indicated that the substantive reasonableness standard "provide[s] a backstop for those few cases that, although procedurally correct, would nonetheless damage the administration of justice because the sentence imposed was shockingly high, shockingly low, or otherwise unsupportable as a matter of law." [United States v. Rigas](#), 583 F.3d 108, 123 (2d Cir. 2009); see also [Cavera](#), 550 F.3d at 190 (stating that the Court will "set aside a district court's *substantive* determination only in exceptional cases where the trial court's decision 'cannot be located within the range of permissible decisions' " (emphasis *108 in original; quoting [United States v. Rigas](#), 490 F.3d at 238)).

2. Consideration of Sentencing Disparities

When sentencing a defendant, a court “shall consider . . . the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.” 18 U.S.C. § 3553(a)(6). The “primary purpose of th[is] provision was to reduce unwarranted sentence disparities nationwide,” although the statute does not limit the sentencing court from considering other types of disparities, including comparisons with codefendants’ sentences. *United States v. Wills*, 476 F.3d 103, 109 (2d Cir. 2007); see *United States v. Frias*, 521 F.3d 229, 236 (2d Cir. 2008).

This Court has repeatedly reaffirmed that sentencing disparities are not “unwarranted” where defendants are not “similarly situated.” *United States v. Wills*, 476 F.3d at 109-10; *United States v. Fernandez*, 443 F.3d at 32 (“[A] sentencing difference is not a forbidden ‘disparity’ if it is justified by legitimate considerations, such as rewards for cooperation.” (citation and internal quotation marks omitted)). Moreover, as this Court has explained, even where a sentencing judge acknowledges the existence of a disparity, such acknowledgment does not necessarily require the judge to “adjust a sentence downward from the advisory guidelines range in order for that sentence to be reasonable.” *United States v. Florez*, 447 F.3d 145, 157-58 (2006) (citation and internal quotation marks omitted). That is, “if sentencing disparities . . . are *109 properly considered, the weight to be given such disparities, like the weight to be given any ‘3553(a) factor,’ is a matter firmly committed to the discretion of the sentencing judge and is beyond our [appellate] review, as long as the sentence ultimately imposed is reasonable in light of all the circumstances presented.” *Id.* at 158 (quoting *Fernandez*, 443 F.3d at 32). This Court has further explained that “[a] reviewing court’s concern about unwarranted disparities is at a minimum when a sentence is within the Guidelines range.” *United States v. Irving*, 554 F.3d 64, 76 (2d Cir. 2009) (internal quotation marks omitted).

C. Discussion

1. Chiasson's Sentence Was Procedurally Reasonable

Chiasson contends that the District Court incorrectly calculated Chiasson’s trading gains by including the gains from trades placed on behalf of Level Global by both Chiasson and Ganek. (Chiasson Br. 59-62). He argues that Ganek’s trades should not have been included “[a]bsent evidence that Ganek joined a conspiracy with Chiasson.” (Chiasson Br. 61). But that is precisely the finding the Court made at trial. Because that finding was not clearly erroneous, see Point V, *infra*, the Court’s inclusion of Ganek’s trades in the gain calculation was proper.

Under the Guidelines, gain in insider trading cases includes all gains that result from “trading in securities by the defendant and persons acting in concert with the defendant or to whom the defendant provided inside information.” U.S.S.G. § 2B1.4, comment. *110 background (emphasis added). That was plainly the case here. The Dell trades made at Level Global in July and August 2008 by Chiasson and Ganek, the co-founders of the firm, were all part of a single position built up over time--a massive short in Dell stock based on the inside tip Adondakis had received about Dell’s surprisingly weak margins for the quarter.

As set forth in greater detail in Point V, *infra*, in July and August 2008, Ganek received multiple updates about Dell’s upcoming quarterly results based on inside tips. (See, e.g., GX 459 (Adondakis informing Chiasson and Ganek that he would get “the DELL check mid-week”), 513 (e-mail from Chiasson to Ganek stating that while an analyst was predicting gross margins for Dell of 18 percent, “our call is 17.5ish”--a reference to the inside information Adondakis had received about Dell’s disappointing margins and the basis for the firm’s short position in Dell)). Ganek’s communications with others at Level Global demonstrated that he understood the source of the information was an insider at Dell. (See, e.g., GX 438 (instant message in which Ganek asked another co-conspirator at Level Global, “did sam here [sic] from his dell contact?”), 515 (Chiasson informing Ganek that a certain analyst believed Dell would miss margin expectations and specifically advising Ganek that although that analyst “has a few guys there [*i.e.*, at Dell],” they were “not sam’s people”)). Indeed, as a matter of common sense, it defies logic to believe that Ganek would permit his firm to take a \$220 million short position--the second largest short in its history--based on an unknown source. (DX 39; *111 GX 64). As the District Court explained, the nature of the information and Ganek’s awareness of “the series of incremental checks spaced out over several weeks, which is consistent with financial results being

firmed up as the roll up process is taking place, as the reporting date approaches,” provided ample evidence that he knew the source of the tips. (Tr. 3255).

Other evidence also supported the conclusion that Chiasson and Ganek acted in concert with one another. In August 2008, for example, after Adondakis prepared an analysis of how Dell's stock would react to the public announcement of the inside information he had received from Tortora, Adondakis printed the analysis and took it to a meeting with Chiasson and another senior Level Global employee with whom he discussed the analysis. (Tr. 1778). Adondakis then observed Chiasson and the other Level Global employee take the analysis into Ganek's office in a closed door meeting without Adondakis. (Tr. 1779). And the day before the earnings announcement, on August 27, 2008, Adondakis had a 40 minute call with Chiasson, Ganek and two other coconspirators at Level Global in which Adondakis informed the group he “ha[d] another Dell update” indicating gross margins were coming in below expectations. (Tr. 1805; GX 523). In light of the extensive evidence of Ganek's participation in the conspiracy with Chiasson, the District Court's finding that the gain attributable to Chiasson was more than \$20 million was not clearly erroneous.

Chiasson also suggests that he should have been held accountable only for his own trades in light of *112 the District Court's approach to sentencing downstream tippees in *Goffer*. There, several downstream tippees--Emanuel Goffer, Michael Kimelman and Craig Drimal--received inside tips from the same source, but for Guidelines purposes, were held responsible only for their own trades. Chiasson's reliance on *Goffer* is unavailing.

First, while Chiasson relies on the District Court's approach in *Goffer* to argue that a downstream tippee can be held accountable only for his or her own trades, or for the trades of those tipped by the defendant, the language of the Guidelines is not so limited. The Guidelines provide that gain in insider trading cases includes the gain resulting from trades by (1) the defendant, (2) people the defendant tipped, and (3) persons acting in concert with the defendant. See U.S.S.G. § 2B1.4, comment. background.

Second, and in any event, Chiasson is not similarly situated to the *Goffer* tippees vis-à-vis Ganek. In *Goffer*, at the time of the trades in question, the downstream tippees worked at three different firms, received information from the same source (Goffer) but through different tipping chains, and traded independently of one another. The relationship among those tippees is most analogous to the relationship between Chiasson and Newman, not Chiasson and Ganek. Consistent with its approach in *Goffer*, the District Court did *not* include Newman's gains (or those of co-conspirators at other investment firms) in Chiasson's gain calculation.

Finally, Chiasson's claim that the District Court did not make sufficiently specific findings to permit *113 review for clear error by this Court is belied by the record. (Chiasson Br. 59). The Court stated that it largely agreed with the reasons set forth in the Government's sentencing submission, which described the evidence supporting the inclusion of Ganek's trades. On top of that, the Court had already explained at trial its finding that Ganek was a coconspirator. (Tr. 3254-56; see Point V, *infra*). This record is easily sufficient for this Court to conclude that the District Court's finding was not clearly erroneous.

2. Chiasson's Sentence Was Substantively Reasonable

Chiasson further contends that his sentence was substantively unreasonable, claiming that the District Court placed undue emphasis on the amount of gain and failed adequately to take into account the need to avoid unwarranted sentencing disparities. (Chiasson Br. 62-70). At Chiasson's sentencing, the Court expressly recognized its statutory obligation to consider, among other factors, the need to avoid unwarranted sentencing disparities. The Court balanced each of those factors and concluded that a sentence of 78 months--substantially below the Guidelines range--was appropriate. In light of all the factors set forth in Section 3553(a), Chiasson's sentence was reasonable.

Chiasson's unlawful conduct spanned a period of nearly two years and encompassed multiple trades in various securities based on a number of different illegal tips. Chiasson repeatedly and deliberately traded *114 on inside information--information he knew had been disclosed by company insiders in intentional breach of their duties of confidentiality. Chiasson also understood

the enormous scope of the conspiracy; in addition to the massive trades made at Level Global, the inside information was being exchanged with other firms that also were trading on the information. Further, Chiasson took steps to conceal the illicit sources of information on which his trades were based. Indeed, he took an internal system at Level Global that was designed to create transparency and turned it on its head, using it to create a bogus paper trail to justify his unlawful trades while concealing their true basis. Chiasson was a sophisticated market professional who plainly understood the illegality of his conduct; to make matters worse, Chiasson was one of three people designated by Level Global to answer employees' questions about the firm's compliance policies, including its insider trading policy. (GX 595).

The magnitude of Chiasson's unlawful trades and resulting profits was truly staggering. The \$220 million short of Dell stock in August 2008--based on inside information about the company's quarterly financial results--was Level Global's second largest short position ever, and it led to profits in excess of \$50 million. (DX 39; GX 64). The unlawful profits from that position were enormous and unprecedented.

As even Chiasson is forced to concede, the size of the gains is a relevant sentencing consideration. The enormous gain from Chiasson's criminal conduct is ***115** certainly a reflection of the extent of his criminal conduct, the extent of his corruption of the capital markets, and the harm caused to others. Many of the harms caused by insider trading are magnified when the unlawful trades and resulting profits are as massive as they were here. *See Goffe*, 721 F.3d at 132 (insider trading gain of approximately \$11 million "had major deleterious effects on the market"). For one, the greater the gain resulting from the unlawful trades, the greater the loss to other participants in the market. Further, as Congress has found, insider trading undermines the public's confidence in the integrity of the financial markets. *See* Insider Trading and Securities Fraud Enforcement Act of 1988, H.R. Rep. No. 100-910, at 7-8 (1988), reprinted in 1988 U.S.C.C.A.N. 6043, 6044 (stating that "[i]nsider trading damages the legitimacy of the capital market and diminishes the public's faith . . . [T]he small investor will be--and has been--reluctant to invest in the market if he feels it is rigged against him"); *see also* Insider Trading Sanctions Act of 1984, H.R. Rep. No. 98-355, at 5 (1983), reprinted in 1984 U.S.C.C.A.N. 2274, 2278 (emphasizing that "[t]he abuse of informational advantages that other investors cannot hope to overcome through their own efforts is unfair and inconsistent with the investing public's legitimate expectation of honest and fair securities markets where all participants play by the same rules"). The resulting damage is particularly severe where, as here, a multi-billion-dollar hedge fund reaps profits of more than \$50 million from a single insider trade.

Even apart from its relevance to the "nature and circumstances of the offense," however, gain is also ***116** relevant to another Section 3553(a) factor that Chiasson overlooks, namely, the need to provide adequate deterrence. Because insider trading has the potential, as demonstrated by the facts of this case, to be an extraordinarily profitable crime, substantial sentences are necessary to counter the incentives to engage in such activity. *See Goffe*, 721 F.3d at 132 ("The district court's assertion that insider trading requires high sentences to alter th[e] calculus" that insider trading is "a game worth playing" given the potential for large profits "is a Congressionally-approved example of giving meaning to the 18 U.S.C. § 3553(a) factors").

Chiasson's contention that his sentence was substantively unreasonable rests largely on comparisons to sentences received by a handful of other insider trading defendants. Of course, the District Court expressly recognized that the need to avoid unwarranted sentencing disparities was one of a number of factors the sentencing court had to consider; the weight to be given that factor, however, was a matter committed to the discretion of the District Court. *United States v. Florez*, 447 F.3d at 157-58. In any event, the comparisons upon which Chiasson relies are inapt.

In comparing himself to other insider trading defendants, Chiasson highlights facts from those cases that are favorable to him, while ignoring important differences. Chiasson compares himself, for example, to Joseph Contorinis, a tippee who received a 72-month sentence. Chiasson correctly notes that Contorinis testified untruthfully at trial, but overlooks that Contorinis's criminal conduct was more limited ***117** in duration and scope than Chiasson's, as Contorinis traded only a single stock, over a short period of time, based on tips from one source about a single transaction.

Chiasson focuses most, however, on the 66-month sentence imposed on Craig Drimal, a downstream tippee in *Goffer*. Chiasson points to certain aggravating factors present in that case, but does not account for the fact that Drimal accepted responsibility and pleaded guilty. (Had Chiasson done so, his Guidelines range would have been substantially reduced.) Further, Chiasson's gains were nearly four times the size of Drimal's, which this Court described as having "major deleterious effects on the market." *Goffer*, 721 F.3d at 132.

Chiasson fails to acknowledge that the key differentiating factor between Drimal and other downstream tippees in *Goffer* (who received substantially lower sentences than he did) was the size of their respective gains. Emanuel Goffer, for example, received a sentence of 36 months' imprisonment even though he shared virtually all of the aggravating factors Chiasson highlights for Drimal (and, unlike Drimal, went to trial); Emanuel Goffer's profits, however, were far smaller than Drimal's. Significantly, this Court affirmed Drimal's 66-month sentence, agreeing with the District Court's consideration of gain as an important sentencing factor. See *Goffer*, 721 F.3d at 132.

Finally, Chiasson argues that a sentence two years longer than that received by Newman was not justified. Chiasson's gain, however, exceeded Newman's *118 by a factor of ten. That Chiasson disagrees with the District Court's balancing of the different factors does not render his sentence unreasonable. As this Court has made clear, "[t]he weight to be afforded any given argument made pursuant to one of the § 3553 factors is a matter firmly committed to the discretion of the sentencing judge and is beyond our review, as long as the sentence ultimately imposed is reasonable in light of all the circumstances presented." *United States v. Nektalov*, 461 F.3d 309, 319 (2d Cir. 2006) (quoting *Fernandez*, 443 F.3d at 32). Here, in light of all the Section 3553(a) factors, Chiasson's below-Guidelines sentence was reasonable.

POINT V

The Forfeiture Order Was Proper

Chiasson finally challenges two aspects of the forfeiture order imposed by the District Court, claiming that the Court committed clear error in finding that David Ganek was a co-conspirator and contending that he was entitled to a jury determination, beyond a reasonable doubt, as to the amount of forfeiture. (Chiasson Br. 70-79). Neither of Chiasson's arguments has merit.

A. Relevant Facts

The evidence at trial established that Ganek was aware that Sam Adondakis (Chiasson's analyst at Level Global) had a source who was a Dell insider, and that Ganek knew Adondakis received numerous updates on Dell's financial results leading up to the company's August 2008 earnings announcement. On *119 August 5, 2008, Adondakis received an initial inside tip concerning Dell's performance in the quarter that had just ended, and passed the information along to Chiasson. (GX 214; Tr. 1761). Three days later, Ganek sent an instant message to another trader at Level Global asking whether Adondakis had heard "from his dell contact." (GX 438). The trader responded, "initial check was neg earlier in the week, next one is later next week I believe (not sure of exact timing), then one more right before the q." (GX 438).

Around that same time, Adondakis used the inside information he had received to prepare an analysis of how the market would react to Dell's quarterly earnings report. (Tr. 1774-78). Adondakis discussed the document in a meeting with Chiasson and another senior Level Global employee; Chiasson and the other employee then took the document to Ganek's office. (Tr. 1778-79). Following this meeting, Level Global increased its short position in Dell. Subsequently, on August 15, Adondakis wrote an e-mail to Chiasson, Ganek, and others, explaining that he would "get the DELL check mid-week & the company reports the following Thurs." (GX 459).

On August 26, Chiasson wrote to Ganek that an analyst had predicted that Dell would report a gross margin of 18 percent, but--consistent with the tip Adondakis had received--stated, "[o]ur call is 17.5ish." (GX 513). Chiasson also informed Ganek that an analyst named Fortuna was predicting a gross margin "miss." (GX 513). In a series of instant messages later that same

day, Chiasson told Ganek that “[For]tuna smells it” and that Fortuna “has a *120 few guys” at Dell, but that they “are not sam's people.” (GX 515).

On August 27, the day before Dell's quarterly announcement, Adondakis had a lengthy telephone call with Chiasson, Ganek, and two other Level Global employees during which Adondakis informed the group that he had another Dell update indicating that the company's gross margins would be lower than expectations. (Tr. 1805; GX 523). While he was still on the call with Adondakis, Ganek instructed a trader to increase Level Global's short position in Dell.

The evidence also established that Ganek knew Adondakis had a source of inside information on NVIDIA, and that this insider provided a series of updates leading up to NVIDIA's May 7, 2009 earnings announcement. On April 27, 2009, Adondakis received an initial tip regarding NVIDIA's gross margins for the quarter (that the company would report 30 percent), and passed it along to Chiasson. (GX 813, 900). The very next day, Chiasson sent an e-mail to Ganek in which he explained that “Sammy [Adondakis] thinks we will get a firmer read shortly,” and that “[p]relim call [on gross margins] is Street is 34/our check is 30 GM.” (GX 907). Adondakis got his next inside tip on NVIDIA on May 4. (GX 820). That same day, a Level Global trader wrote Ganek that Chiasson was shorting NVIDIA “500k for starters” based on “Sam's latest check” that “GM's will be light when [NVIDIA] report[s] on Thursday.” (GX 927). That evening, Ganek and Chiasson had the following instant message exchange:

Ganek:	nvda?
Chiasson:	starting to do a little here . . . gm call remains bad and bad for this qtr and guide[.] [C]alls so far we are doing this aft suggest people not prepared for what is coming in print and guide versus our checks
Ganek:	have gotten anything incremental to last weeks call?
Chiasson:	yes this call today.

(GX 923).

*121 At trial, the District Court admitted Ganek's statements in these various instant message and email communications as co-conspirator statements, pursuant to [Rule 801\(d\)\(2\)\(E\) of the Federal Rules of Evidence](#), finding that the Government had established by a preponderance of the evidence that Ganek was a co-conspirator of Chiasson's. (Tr. 3257). The Court stated that, although Adondakis did not explicitly tell Ganek he had a source inside Dell, a preponderance of the evidence showed that “Ganek was aware of the source and the nature of th[e] information” Adondakis provided. (Tr. 3254). In this regard, the Court commented that Ganek knew Adondakis had a Dell contact, that Ganek “was aware that the Dell contact was providing Adondakis with a series of incremental checks . . . spaced out over several *122 weeks, which is consistent with financial results being firmed up as the roll up process is taking place,” and that Ganek knew “Adondakis was providing Dell checks to Ganek during a black-out period for Dell.” (Tr. 3255). As for NVIDIA, the Court emphasized that Ganek was aware Adondakis's information would become “firmer as the earnings report approached.” (Tr. 3255). The Court further found that Ganek's authorization of “large trading positions” in Dell and NVIDIA shortly after receiving information from Adondakis was “circumstantial evidence of his knowledge.” (Tr. 3255).

Consistent with these findings at trial, in determining the forfeiture amount, the Court stated that Ganek was an unindicted co-conspirator and ordered Chiasson to forfeit \$1,382,217, a sum representing incentive and management fees received by both Chiasson and Ganek. (A. 3003).

B. Applicable Law

The forfeiture statute pertaining to securities fraud broadly provides for the forfeiture of “[a]ny property, real or personal, which constitutes or is derived from proceeds traceable to [the] violation.” 18 U.S.C. § 981(a)(1)(C).³⁸ “[A] court may order a defendant to forfeit proceeds received by others who *123 participated jointly in the crime, provided the actions generating those proceeds were reasonably foreseeable to the defendant.” *Contorinis*, 692 F.3d at 147; *United States v. Fruchter*, 411 F.3d 377, 384 (2d Cir. 2005) (“So long as the sentencing court finds by a preponderance of the evidence that the criminal conduct through which the proceeds were made was foreseeable to the defendant, the proceeds should form part of the forfeiture judgment.”); see also *United States v. Royer*, 549 F.3d 886, 904 (2d Cir. 2008) (affirming forfeiture amount which, like the gain amount found at sentencing, incorporated the fraudulent conduct of persons who acted in concert with the defendant).

³⁸ Although Section 981 is a civil forfeiture provision, 28 U.S.C. § 2461 provides that criminal forfeiture is mandated where federal law provides for civil forfeiture but there is no parallel criminal forfeiture provision.

The Government must prove the facts supporting forfeiture only by a preponderance of the evidence. See *United States v. Treacy*, 639 F.3d 32, 48 (2d Cir. 2011); *United States v. Gaskin*, 364 F.3d at 461. Moreover, “[t]he Court’s determination [as to the proper forfeiture amount] may be based on evidence already in the record, including any written plea agreement, and on any additional evidence or information submitted by the parties and accepted by the court as relevant and reliable.” Fed. R. Crim. P. 32.2(b)(1)(B). “When a forfeiture award is challenged on appeal, this Court reviews the district court’s legal conclusions *de novo* and its factual findings for clear error.” *United States v. Treacy*, 639 F.3d at 47. Under this standard, if the district court’s factual findings are “ ‘plausible in light of the record viewed in its entirety,’ ” *United States v. Reilly*, 76 F.3d 1271, 1276 (2d Cir. 1996) (quoting *Anderson v. City of Bessemer* *124 City, 470 U.S. 564, 574 (1985)), then the district court’s findings should be affirmed.

C. Discussion

1. The District Court’s Factual Findings Were Not Clearly Erroneous

Chiasson contends that the District Court committed clear error in finding, by a preponderance of the evidence, that Ganek was a co-conspirator. (Chiasson Br. 72-74). This claim is unavailing. As the Court found at trial, a preponderance of the evidence showed that Ganek “was aware of the source and the nature of th [e] information” Adondakis provided regarding Dell and NVIDIA. (Tr. 3254).

As to Dell, e-mails and instant messages showed that Ganek knew Adondakis had a contact at Dell (GX 438 (Ganek writing, “did sam here [sic] from his dell contact?”), and that Adondakis was providing incremental updates as Dell consolidated its internal financial numbers before reporting them (GX 438 (trader writing to Ganek on August 8, 2008, that Adondakis’s “initial check was neg earlier in the week, next one is later next week I believe (not sure of exact timing), then one more right before the q”), 459 (Adondakis writing to Ganek and others on August 15, 2008, that he would “get the DELL check mid-week & the company reports the following Thurs”). Based on information Adondakis provided, Ganek approved increasing Level Global’s short position in Dell (which was the second largest short position Level Global had ever taken in any stock) in advance of Dell’s August 2008 earnings announcement. *125 In light of the documentary evidence--and given that it is highly unlikely Ganek would have approved such a large short position without knowing the basis for the trade--the District Court had ample basis for its conclusion that Ganek knew Adondakis had inside information on Dell’s financial results.

As to NVIDIA, documentary evidence established that Ganek knew Adondakis had received specific information regarding the gross margin number the company would report in its May 2009 earnings announcement and expected to “get a firmer read shortly.” (GX 907). Ganek was also informed that Adondakis received an update on NVIDIA’s gross margins only days before the announcement, and that Adondakis’s source had stated that gross margins would be lower than market expectations. (GX 923, 927). The District Court was entitled to rely on this evidence to conclude that Ganek knew he was obtaining nonpublic information regarding the consolidation of NVIDIA’s financial data leading up to the quarterly earnings announcement.

In pressing a contrary conclusion, Chiasson emphasizes that Adondakis testified “he did *not* reveal his inside sources to Ganek.” (Chiasson Br. 72 (emphasis in original)). That Adondakis did not do so was hardly surprising, given that he reported to Chiasson and had little interaction with Ganek before the summer of 2008. (Tr. 1955). The documentary evidence, however, provided ample basis for the District Court to conclude that Ganek was aware of Adondakis's sources, either through Chiasson or other employees at Level Global.

***126** Chiasson further argues that “even if Ganek knew that Adondakis got inside information,” he nonetheless was not a co-conspirator because “[t]here was no evidentiary basis for finding that Ganek knew that Adondakis's sources disclosed information in violation of confidentiality duties, let alone in exchange for personal benefit.” (Chiasson Br. 72). Given Ganek's knowledge that Adondakis had access to consolidated earnings numbers as Dell and NVIDIA prepared their quarterly reports, the District Court could properly conclude by a preponderance of the evidence that Ganek knew Adondakis's source was disclosing the information improperly, in violation of a duty of confidentiality. Moreover, as explained above, Ganek need not have known that the insiders disclosed the information for a personal benefit. In any event, the Court could properly infer that Ganek was aware an insider would disclose such information only in exchange for some benefit.

Chiasson also asserts that Ganek's trades in Dell and NVIDIA were not “unusually large given [Level Global's] size,” and contends that the District Court placed undue weight on the volume of those trades. (Chiasson Br. 73). Contrary to this claim, the Court properly considered the size of the trades, given that Level Global's Dell trade in August 2008 was the second largest short position the firm had ever taken (DX 39), and that the Dell and NVIDIA trades (involving positions of \$220 and \$45 million, respectively) were indisputably significant (GX 62, 73).

As a last ditch effort to attack the District Court's finding, Chiasson argues that the Court improperly ***127** speculated that, after Adondakis presented to Chiasson and a Level Global trader an analysis of Dell based on his inside information, Chiasson, the trader, and Ganek discussed Adondakis's analysis (and his source) in a closed-door meeting. (Chiasson Br. 73; Tr. 3256-57). In light of the documentary evidence demonstrating Ganek's knowledge of Adondakis's source, the Court had ample basis to draw this inference. Nor is there any traction to Chiasson's claim that this meeting did not occur because Ganek “was not in the office” on the day Adondakis testified it occurred. (Chiasson Br. 73). Even if Adondakis were incorrect as to the date of the meeting, the Court did not clearly err in crediting Adondakis's testimony that it happened.

Because the District Court did not commit clear error in determining that Ganek was a coconspirator, Chiasson's challenge to the forfeiture amount should be rejected.

2. The District Court Properly Determined Forfeiture by a Preponderance of the Evidence

Chiasson further argues that, even if the District Court's factual findings were correct, the forfeiture order should be vacated because “the operative facts had to be found by a jury beyond a reasonable doubt.” (Chiasson Br. 74). Chiasson contends that his position finds support in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and “evolving Supreme Court case law.” (Chiasson Br. 74). He is mistaken. The Supreme Court has expressly held that “the right to a jury verdict ***128** on forfeitability does not fall within the Sixth Amendment's constitutional protection.” *Libretti v. United States*, 516 U.S. 29, 49 (1995).

Following the Supreme Court's ruling in *United States v. Booker*, 543 U.S. 220, this Court rejected an earlier iteration of the argument Chiasson presses here. In *United States v. Fruchter*, 411 F.3d 377, this Court considered a claim that *Apprendi* and its progeny had “so undercut *Libretti* as to have overruled it sub silentio.” *United States v. Fruchter*, 411 F.3d at 381. Acknowledging that “*Libretti* remains the law until the Supreme Court expressly overturns it,” the Court nonetheless considered and rejected the defendant's claim on the merits. *Id.* at 381-82 (citing *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 484 (1989)). The Court held that the rule of *Apprendi* that reserves to juries the determination of any fact (other than the fact of a prior conviction) that increases a defendant's maximum sentence does not apply to criminal forfeiture, because such forfeiture is “*not* a determinate [sentencing] scheme” and is a “different animal from determinate sentencing” in that there

is “no . . . previously specified range” that applies to forfeiture. *Fruchter*, 411 F.3d at 383 (emphasis in original). The Court thus squarely held in *Fruchter* that forfeiture need not be proven to a jury beyond a reasonable doubt.

In arguing that *Libretti* and *Fruchter* are no longer good law, Chiasson relies on the Supreme Court's recent decisions in *Southern Union Co. v. United States*, 132 S. Ct. 2344 (2012), and *Alleyne v. United States*, 133 S. Ct. 2151 (2013). (Chiasson Br. 76-77).

*129 Neither case purported to overrule *Libretti*. Accordingly, *Libretti* remains binding precedent. See *Fruchter*, 411 F.3d at 381-82. In any event, the reasoning of those cases does not undermine *Libretti*'s holding.

In *Southern Union*, which does not address forfeiture at all, the Supreme Court held that the *Apprendi* rule applies to criminal fines. The criminal statute at issue in the case, which prohibited storing liquid mercury without a permit, authorized a maximum fine of \$50,000 for each day of violation. *Southern Union Co. v. United States*, 132 S. Ct. at 2349. The Court ruled that, in order for a district court to impose a fine greater than \$50,000, the jury must make a finding as to the duration of the violation. In so holding, the Court recognized that there could be no “*Apprendi* violation where no maximum is prescribed.” *Id.* at 2353. Thus, far from requiring jury determinations as to forfeiture, *Southern Union* acknowledges that *Apprendi* is not implicated where a statute--like the forfeiture statutes at issue here--does not set a maximum penalty. Indeed, two Courts of Appeals have rejected *Apprendi*-type challenges to criminal forfeiture based on *Southern Union*, relying on the very reason this Court identified in *Fruchter*. See *United States v. Day*, 700 F.3d 713, 732-33 (4th Cir. 2012) (Wilkinson, J.); *United States v. Phillips*, 704 F.3d 754, 770 (9th Cir. 2012) (Rakoff, J.).

Nor does *Alleyne*, which also does not address forfeiture, support Chiasson's argument. *Alleyne* held that “any fact that increases the mandatory minimum [sentence for a crime] is an ‘element’ that must be submitted to the jury.” *130 *Alleyne v. United States*, 133 S. Ct. at 2155. In so holding, the Court emphasized that “the essential Sixth Amendment inquiry is whether a fact is an element of the crime,” and stated that “[w]hen a fact alters the legally prescribed punishment so as to aggravate it, the fact necessarily forms a constituent part of a new offense and must be submitted to the jury.” *Id.* at 2162. Applying this holding, the Court found that Section 924(c) of Title 18, United States Code, establishes an offense of using or carrying a firearm in relation to a crime of violence (which carries a mandatory minimum sentence of five years' imprisonment) and an aggravated offense of brandishing a firearm in relation to a crime of violence (which carries a mandatory minimum sentence of seven years' imprisonment). *Id.* Section 924(c) thus establishes multiple offenses with aggravating elements that trigger enhanced mandatory minimum penalties.

If Chiasson were correct that *Alleyne* applied to the forfeiture statute at issue here, that statute would create an infinite number of separate, aggravated offenses, with each additional dollar (or other quantum) of criminal proceeds subject to forfeiture representing an element of an aggravated offense. As this Court has recognized, however, forfeiture statutes are a “different animal” from determinate sentencing regimes--like the one established in Section 924(c)--that “authorize[] the imposition of a sentence within a specified range.” *Fruchter*, 411 F.3d at 383. Indeed, rather than defining gradations of offenses, the forfeiture statute applicable here simply provides that all property representing proceeds of illegal activity is subject to forfeiture. See *131 18 U.S.C. § 981(a)(1)(C). It is thus unlike the statute at issue in *Alleyne*, because there are “no . . . previously specified range[s].” *Fruchter*, 411 F.3d at 383.

Moreover, and contrary to Chiasson's claim, Section 981(a)(1)(C) does not establish a mandatory minimum at all. Even if the statute could somehow be interpreted as designating the District Court's finding of fact as to the forfeiture amount as a mandatory minimum, however, that finding was authorized by the jury's verdict. This is because Chiasson's conviction authorized forfeiture of a specific sum, namely, any property constituting or derived from proceeds of his crimes. The District Court, in determining the extent of those proceeds, was merely giving definite shape to the forfeiture permitted by the jury's verdict. Cf. *United States v. Leahy*, 438 F.3d 328, 337-38 (3d Cir. 2006) (en banc) (relying on similar reasoning to reject *Apprendi*-type challenge to restitution; cited favorably in *United States v. Reifler*, 446 F.3d 65, 118-19 (2d Cir. 2006)). Chiasson is thus wrong in asserting that, because forfeiture is mandatory, the forfeiture statute creates “a statutory mandatory minimum penalty” not authorized by the verdict. (Chiasson Br. 76 (quoting 28 U.S.C. § 2461(c), which provides that district courts “shall order” forfeiture)).

In this regard, Chiasson's argument that the District Court's findings concerning forfeiture effectively created a statutory mandatory minimum penalty is inconsistent with this Court's ruling in *Fruchter*. If the Court's findings were understood as effectively establishing a mandatory minimum penalty, they should also be understood as establishing at the very ***132** same time the maximum authorized forfeiture penalty. Taken to its logical conclusion, on this view, no amount of forfeiture is authorized until a sentencing court makes a factual finding as to the amount of proceeds of a crime. *Fruchter*, however, did not adopt the view that a trial court's factual findings are tantamount to the creation of a mandatory minimum/statutory maximum forfeiture penalty. Had it done so, the Court would have identified an *Apprendi*-type error. Instead, *Fruchter* correctly treated forfeiture as an open-ended punishment scheme without a statutory maximum (and thus implicitly without a mandatory minimum) that does not implicate the Sixth Amendment.³⁹

³⁹ Chiasson also contends that even if he had no right under the Sixth Amendment to a jury determination regarding forfeiture, the Fifth Amendment independently required the Government to prove the forfeiture amount beyond a reasonable doubt. (Chiasson Br. 78-79). He is mistaken. The Sixth Amendment's guarantee of the right to a jury trial, together with the Fifth Amendment's Due Process Clause, "require[] that each element of a crime be proved to the jury beyond a reasonable doubt." *Alleyne*, 133 S. Ct. 2156. Because Chiasson did not have a right to a jury determination as to forfeiture, the Government was not required to prove the forfeiture amount beyond a reasonable doubt.

In sum, the Supreme Court's recent Sixth Amendment jurisprudence--including *Southern Union* and *Alleyne*--does not require a jury determination, ***133** beyond a reasonable doubt, as to forfeiture. In any event, *Libretti* remains controlling precedent. Accordingly, the District Court did not err in determining the forfeiture amount by a preponderance of the evidence.

CONCLUSION

The judgments of conviction should be affirmed.

Exhibit D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -x
:

UNITED STATES OF AMERICA :

-v.- :

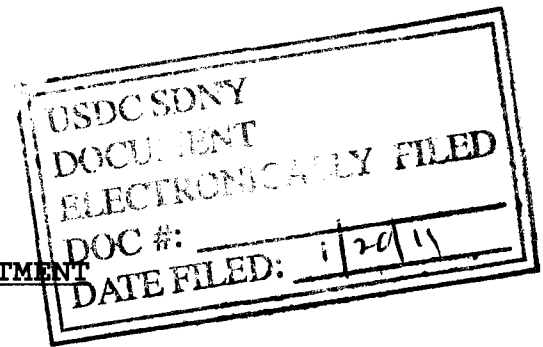
RAJ RAJARATNAM, :

Defendant. :

- - - - -x

INDICTMENT

S2 09 Cr. 1184 (RJH)



COUNT ONE

(Conspiracy to Commit Securities Fraud)

The Grand Jury charges:

Relevant Entities and Individuals

1. At certain times relevant to this Indictment, the Galleon Group ("Galleon") operated a family of hedge funds based in New York, New York. During certain times relevant to this Indictment, Galleon had as much as \$7 billion in assets under management. Galleon Management, L.P. ("Galleon Management") managed a number of Galleon's hedge funds including, but not limited to, Galleon Technology Offshore, Ltd. and Galleon Diversified Fund, Ltd. At all times relevant to this Indictment, RAJ RAJARATNAM, the defendant, served as the Managing Member of Galleon Management LLC, the general partner of Galleon Management.

2. At all times relevant to this Indictment, RAJ RAJARATNAM, the defendant, served as the portfolio manager for Galleon Technology Offshore, Ltd. (referred to herein, along with any of its successors and predecessors, as "Galleon Tech"), as

well as certain accounts of Galleon Diversified Fund, Ltd. (referred to herein, along with any of its successors and predecessors, as "Diversified").

The Rajaratnam-Galleon Insider Trading Scheme

3. From in or about 2003 through in or about March 2009, RAJ RAJARATNAM, the defendant, certain then-current Galleon employees, certain former Galleon employees, and others known and unknown, participated in a scheme to defraud by obtaining, sharing and disclosing material, nonpublic information ("Inside Information") and/or executing securities transactions based on Inside Information pertaining to various companies. The Inside Information related to merger and acquisition activity, quarterly earnings announcements, business updates, and other corporate events. RAJARATNAM and his co-conspirators engaged in this conduct for the purpose of executing profitable securities transactions in accounts affiliated with Galleon, and with knowledge that the Inside Information had been disclosed in violation of duties of trust and confidence.

The Conspiracy

4. From at least in or about 2003 up to and including in or about March 2009, in the Southern District of New York and elsewhere, RAJ RAJARATNAM, the defendant, certain then-current Galleon employees, certain former Galleon employees, and others known and unknown, unlawfully, willfully, and knowingly did

combine, conspire, confederate and agree together and with each other to commit offenses against the United States, to wit, securities fraud, in violation of Title 15, United States Code, Sections 78j(b) & 78ff, and Title 17, Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2.

Object of the Conspiracy

5. It was a part and an object of the conspiracy that RAJ RAJARATNAM, the defendant, certain then-current Galleon employees, certain former Galleon employees, and others known and unknown, unlawfully, willfully and knowingly, directly and indirectly, by the use of the means and instrumentalities of interstate commerce, and of the mails, and of facilities of national securities exchanges, would and did use and employ, in connection with the purchase and sale of securities, manipulative and deceptive devices and contrivances in violation of Title 17, Code of Federal Regulations, Section 240.10b-5 by: (a) employing devices, schemes and artifices to defraud; (b) making untrue statements of material fact and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices and courses of business which operated and would operate as a fraud and deceit upon persons, all in violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Sections 240.10b-

5 and 240.10b5-2.

Means and Methods of the Conspiracy

6. Among the means and methods by which RAJ RAJARATNAM, the defendant, certain then-current Galleon employees, certain former Galleon employees, and others known and unknown, would and did carry out the conspiracy were the following:

a. Certain individuals with access to Inside Information misappropriated that Inside Information in violation of: (a) the fiduciary and other duties of trust and confidence that these individuals owed to their respective employers and/or their shareholders; (b) the expectations of confidentiality of their respective employers; and (c) their respective employers' written policies regarding the use and safekeeping of confidential and material, nonpublic information.

b. These individuals disclosed Inside Information to RAJARATNAM, his co-conspirators or others in violation of duties of trust and confidence, with the understanding that the Inside Information would be used for the purpose of purchasing or selling securities.

c. RAJARATNAM and his co-conspirators shared certain of this Inside Information with one another, all for the purpose of engaging in profitable securities transactions in accounts affiliated with Galleon, and with knowledge that the Inside Information had been disclosed in violation of duties of

trust and confidence.

d. RAJARATNAM and his co-conspirators, while in possession of the Inside Information that had been disclosed in violation of duties trust and confidence, purchased and sold securities based on Inside Information and thereby received substantial illegal profits.

Overt Acts

7. In furtherance of the conspiracy and to effect the illegal object thereof, RAJ RAJARATNAM, the defendant, and his co-conspirators committed the following overt acts, among others, in the Southern District of New York and elsewhere:

a. In or about 2005, a co-conspirator provided RAJARATNAM with Inside Information relating to Integrated Circuit Systems, Inc.

b. In or about 2006, RAJARATNAM obtained Inside Information relating to Xilinx, Inc.

c. In or about March 2008, RAJARATNAM provided a co-conspirator with Inside Information relating to Clearwire Corporation.

d. In or about May 2008, in New York, New York, a co-conspirator provided RAJARATNAM with Inside Information relating to Vishay Intertechnology, Inc.

e. In or about May 2008, RAJARATNAM provided one or more co-conspirators with Inside Information relating to

Spansion Inc.

f. In or about August 2008, RAJARATNAM provided a co-conspirator with Inside Information relating to Advanced Micro Devices Inc. ("AMD").

g. In or about October 2008, RAJARATNAM provided a co-conspirator with Inside Information relating to Goldman Sachs Group, Inc.

h. In or about January 2009, a co-conspirator called RAJARATNAM in New York, New York, and provided him with Inside Information relating to Atheros Communications, Inc.

i. In or about January 2009, a co-conspirator called RAJARATNAM in New York, New York, and provided him with Inside Information relating to Marvell Technology Group, Ltd.

(Title 18, United States Code, Section 371.)

COUNT TWO

(Conspiracy to Commit Securities Fraud)

The Grand Jury further charges:

Relevant Entities and Individuals

8. The allegations contained in paragraphs 1 and 2 of this Indictment are repeated and realleged as though fully set forth herein.

9. At all times relevant to this Indictment, Roomy Khan, a co-conspirator not named as a defendant herein, traded securities on her own behalf and, at certain times relevant to

this Indictment, exchanged Inside Information about certain companies with RAJ RAJARATNAM, the defendant.

The Rajaratnam-Khan Insider Trading Scheme

10. From in or about January 2006 through in or about July 2007, RAJ RAJARATNAM, Roomy Khan, and others known and unknown, participated in a scheme to defraud by disclosing Inside Information and/or executing securities transactions based on Inside Information pertaining to at least the following publicly traded companies: Polycom, Inc. ("Polycom"), Hilton Hotels Corp. ("Hilton"), and Google Inc. ("Google"). The means by which RAJARATNAM and Roomy Khan effectuated the scheme were as follows: Khan obtained Inside Information regarding Polycom, Hilton and Google from various sources (the "Khan Inside Sources"), who disclosed the Inside Information in violation of duties of trust and confidence that the Khan Inside Sources owed to their respective employers, their employers' shareholders, and/or their employers' clients. Khan communicated this Inside Information to RAJARATNAM, who, knowing that the Inside Information had been disclosed in violation of duties of trust and confidence, caused Galleon Tech and Diversified to execute securities transactions on the basis of this Inside Information, earning a total profit of approximately \$14 million from the scheme. In exchange, RAJARATNAM provided Khan with information regarding Intel and other technology companies.

The Conspiracy

11. From at least in or about January 2006 up to and including in or about July 2007, in the Southern District of New York and elsewhere, RAJ RAJARATNAM, the defendant, Roomy Khan, and others known and unknown, unlawfully, willfully, and knowingly did combine, conspire, confederate and agree together and with each other to commit offenses against the United States, to wit, securities fraud, in violation of Title 15, United States Code, Sections 78j(b) & 78ff, and Title 17, Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2.

Object of the Conspiracy

12. It was a part and an object of the conspiracy that RAJ RAJARATNAM, the defendant, Roomy Khan, and others known and unknown, unlawfully, willfully and knowingly, directly and indirectly, by the use of the means and instrumentalities of interstate commerce, and of the mails, and of facilities of national securities exchanges, would and did use and employ, in connection with the purchase and sale of securities, manipulative and deceptive devices and contrivances in violation of Title 17, Code of Federal Regulations, Section 240.10b-5 by: (a) employing devices, schemes and artifices to defraud; (b) making untrue statements of material fact and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and

(c) engaging in acts, practices and courses of business which operated and would operate as a fraud and deceit upon persons, all in violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2.

Means and Methods of the Conspiracy

13. Among the means and methods by which RAJ RAJARATNAM, the defendant, Roomy Khan, and others known and unknown, would and did carry out the conspiracy were the following:

a. The Khan Inside Sources misappropriated Inside Information in violation of: (a) the fiduciary and other duties of trust and confidence that these sources owed to their respective employers, their shareholders, and/or their employers' clients; (b) the expectations of confidentiality of their respective employers; and (c) their respective employers' written policies regarding the use and safekeeping of confidential and material, nonpublic information.

b. The Khan Inside Sources disclosed the Inside Information to Roomy Khan in breach of their duty of confidentiality to their respective employers, their shareholders, and/or their employers' clients, with the understanding that Khan and others would use the Inside Information to purchase and sell securities, and thereby receive substantial illegal profits.

c. Khan disclosed the Inside Information to RAJARATNAM, knowing that the Khan Inside Sources had disclosed the Inside Information to her in breach of their duty of confidentiality to their respective employers, their shareholders, and/or their employers' clients.

d. RAJARATNAM, while in possession of the Inside Information that he knew had been misappropriated by the Khan Inside Sources in breach of their duty of confidentiality to their respective employers, their shareholders, and/or their employers' clients, purchased and sold securities based on such information and thereby received substantial illegal profits.

Overt Acts

14. In furtherance of the conspiracy and to effect the illegal object thereof, RAJ RAJARATNAM, the defendant, and Roomy Khan and their co-conspirators committed the following overt acts, among others, in the Southern District of New York and elsewhere:

a. On or about January 9, 2006, Khan sent the following instant message to RAJARATNAM, in New York, New York: "donot [sic] buy plcm till i het [sic] guidance; want to make sure guidance OK."

b. In or about January 2006, in New York, New York, RAJARATNAM caused Galleon Tech to purchase shares of Polycom common stock, which traded under the symbol "PLCM."

c. On or about July 3, 2007, in New York, New

York, RAJARATNAM caused Galleon Tech to purchase approximately 400,000 shares of Hilton common stock, which traded under the symbol "HLT."

d. In or about July 2007, in New York, New York, RAJARATNAM caused Galleon Tech and Diversified to execute transactions in the securities of Google.

(Title 18, United States Code, Section 371.)

COUNT THREE

(Conspiracy to Commit Securities Fraud)

The Grand Jury further charges:

Relevant Entities and Individuals

15. The allegations contained in paragraphs 1 and 2 of this Indictment are repeated and realleged as though fully set forth herein.

16. At all times relevant to this Indictment, Rajiv Goel, a co-conspirator not named as a defendant herein, worked at Intel. Goel worked in Intel's Treasury Group and was responsible for assisting Intel Capital, the investment arm of Intel, with its strategic investment decisions.

The Rajaratnam-Goel Insider Trading Scheme

17. From at least in or about 2007 through in or about 2009, RAJ RAJARATNAM, the defendant, Rajiv Goel, and others known and unknown, participated in a scheme to defraud by disclosing Inside Information and/or executing securities transactions based

on Inside Information relating to Intel. The means by which RAJARATNAM and Goel effectuated the fraudulent scheme were as follows: Goel obtained Inside Information relating to Intel, including (i) in or about April 2007, Inside Information relating to Intel's earnings announcement for the quarter ending in March 2007, and (ii) in or about 2008, Inside Information relating to Intel's plans to invest in a joint venture involving Clearwire Corp. (collectively, the "Intel Inside Information"). Goel disclosed the Intel Inside Information to RAJARATNAM in violation of duties of trust and confidence that Goel owed to Intel. RAJARATNAM, knowing that Goel had disclosed the Intel Inside Information to him in violation of duties of trust and confidence, then caused Galleon Tech and Diversified to execute securities transactions on the basis of this Inside Information, earning a total profit (or avoiding losses) of approximately \$3 million from the scheme. Goel provided the Intel Inside Information to RAJARATNAM because of his friendship with RAJARATNAM. Goel benefitted from his friendship with RAJARATNAM in various ways, some of which were financial. For example, in or about 2005 and 2006, RAJARATNAM gave Goel money to help Goel with personal financial matters, and, from in or about October 2005 to in or about 2009, RAJARATNAM executed securities transactions on behalf of Goel in Goel's personal brokerage account, earning Goel trading profits. For example, in or about October 2008, RAJARATNAM

executed a profitable trade in PeopleSupport common stock in Goel's personal brokerage account based on Inside Information that RAJARATNAM obtained from his colleague at Galleon who served on PeopleSupport's Board of Directors.

The Conspiracy

18. From at least in or about 2007 up to and including in or about 2009, in the Southern District of New York and elsewhere, RAJ RAJARATNAM, the defendant, Rajiv Goel, and others known and unknown, unlawfully, willfully, and knowingly did combine, conspire, confederate and agree together and with each other to commit offenses against the United States, to wit, securities fraud, in violation of Title 15, United States Code, Sections 78j(b) & 78ff, and Title 17, Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2.

Object of the Conspiracy

19. It was a part and an object of the conspiracy that RAJ RAJARATNAM, the defendant, Rajiv Goel, and others known and unknown, unlawfully, willfully and knowingly, directly and indirectly, by the use of the means and instrumentalities of interstate commerce, and of the mails, and of facilities of national securities exchanges, would and did use and employ, in connection with the purchase and sale of securities, manipulative and deceptive devices and contrivances in violation of Title 17, Code of Federal Regulations, Section 240.10b-5 by: (a) employing

devices, schemes and artifices to defraud; (b) making untrue statements of material fact and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices and courses of business which operated and would operate as a fraud and deceit upon persons, all in violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2.

Means and Methods of the Conspiracy

20. Among the means and methods by which RAJ RAJARATNAM, the defendant, Rajiv Goel, and others known and unknown, would and did carry out the conspiracy were the following:

a. Goel misappropriated the Intel Inside Information in violation of: (a) the fiduciary and other duties of trust and confidence that Goel owed Intel; (b) the expectations of confidentiality of Intel; and (c) Intel's written policies regarding the use and safekeeping of confidential and material, nonpublic information.

b. Goel disclosed the Intel Inside Information to RAJARATNAM in breach of Goel's duty of confidentiality to his employer, with the understanding that RAJARATNAM and others would use the Inside Information to purchase and sell securities, and

thereby receive substantial illegal profits.

c. RAJARATNAM, while in possession of the Intel Inside Information that he knew had been misappropriated by Goel in breach of Goel's duty of confidentiality to Goel's employer, purchased and sold securities based on such information and thereby received substantial illegal profits.

Overt Acts

21. In furtherance of the conspiracy and to effect the illegal object thereof, RAJ RAJARATNAM, the defendant, Rajiv Goel, and their co-conspirators committed the following overt acts, among others, in the Southern District of New York and elsewhere:

a. In or about April 2007, Goel provided RAJARATNAM with Inside Information about Intel's quarterly earnings announcement for the quarter ending in March 2007.

b. On or about March 20, 2008, Goel made a call to a cellphone used by RAJARATNAM.

c. On or about March 24, 2008, in New York, New York, RAJARATNAM caused Galleon Tech to purchase approximately 125,800 shares of Clearwire common stock.

(Title 18, United States Code, Section 371.)

COUNT FOUR

(Conspiracy to Commit Securities Fraud)

The Grand Jury further charges:

Relevant Entities and Individuals

22. The allegations contained in paragraphs 1 and 2 of this Indictment are repeated and realleged as though fully set forth herein.

23. At all times relevant to this Indictment, Anil Kumar, a co-conspirator not named as a defendant herein, worked at McKinsey & Company, Inc. ("McKinsey"), a global management consulting firm, as a senior partner and director. In that capacity, Kumar advised various clients in the technology industry concerning their business strategies, including potential acquisitions and reorganizations.

The Rajaratnam-Kumar Insider Trading Scheme

24. From in or about 2003 through in or about October 2009, RAJ RAJARATNAM, the defendant, Anil Kumar, and others known and unknown, participated in a scheme to defraud by disclosing Inside Information and/or executing securities transactions based on Inside Information obtained from clients of McKinsey. The means by which RAJARATNAM and Kumar effectuated the fraudulent scheme were as follows: Kumar obtained Inside Information from certain of McKinsey's clients, including, for example, Inside Information relating to AMD, ATI Technologies Inc. ("ATI") and

eBay Inc. ("eBay"). Kumar communicated the Inside Information to RAJARATNAM in violation of duties of trust and confidence that Kumar owed to McKinsey and/or its clients. RAJARATNAM then caused Galleon Tech and Diversified to execute securities transactions based on the Inside Information, earning a total profit of at least approximately \$24.5 million from the scheme. In exchange for this Inside Information, RAJARATNAM arranged for Galleon to wire money to an offshore account designated by Kumar. That money was subsequently reinvested in certain Galleon funds in the name of Kumar's domestic worker and then subsequently, in the name of an offshore entity designated by Kumar. In addition, in or about January 2007, RAJARATNAM wired approximately \$1 million to an offshore account controlled by Kumar.

The Conspiracy

25. From in or about 2003 through in or about October 2009, in the Southern District of New York and elsewhere, RAJ RAJARATNAM, the defendant, Anil Kumar, and others known and unknown, unlawfully, willfully, and knowingly did combine, conspire, confederate and agree together and with each other to commit offenses against the United States, to wit, securities fraud, in violation of Title 15, United States Code, Sections 78j(b) & 78ff, and Title 17, Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2.

Object of the Conspiracy

26. It was a part and an object of the conspiracy that RAJ RAJARATNAM, the defendant, Anil Kumar, and others known and unknown, unlawfully, willfully and knowingly, directly and indirectly, by the use of the means and instrumentalities of interstate commerce, and of the mails, and of facilities of national securities exchanges, would and did use and employ, in connection with the purchase and sale of securities, manipulative and deceptive devices and contrivances in violation of Title 17, Code of Federal Regulations, Section 240.10b-5 by: (a) employing devices, schemes and artifices to defraud; (b) making untrue statements of material fact and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices and courses of business which operated and would operate as a fraud and deceit upon persons, all in violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2.

Means and Methods of the Conspiracy

27. Among the means and methods by which RAJ RAJARATNAM, the defendant, Anil Kumar, and others known and unknown, would and did carry out the conspiracy were the following:

a. Kumar misappropriated the Inside Information in violation of: (a) the fiduciary and other duties of trust and confidence that Kumar owed to McKinsey and/or its clients; (b) the expectations of confidentiality of McKinsey and its clients; and (c) McKinsey's written policies regarding the use and safekeeping of confidential and material, nonpublic information.

b. Kumar disclosed the Inside Information to RAJARATNAM in breach of Kumar's duty of confidentiality to his employer and/or its clients, with the understanding that RAJARATNAM and others would use the Inside Information to purchase and sell securities, and thereby receive substantial illegal profits.

c. RAJARATNAM, while in possession of the Inside Information that he knew had been misappropriated by Kumar in breach of Kumar's duty of confidentiality to Kumar's employer and/or its clients, purchased and sold securities based on such information and thereby received substantial illegal profits.

Overt Acts

28. In furtherance of the conspiracy and to effect the illegal object thereof, RAJ RAJARATNAM, the defendant, Anil Kumar and their co-conspirators committed the following overt acts, among others, in the Southern District of New York and elsewhere:

a. In or about 2006, Kumar spoke to RAJARATNAM by telephone about AMD's planned acquisition of ATI.

b. On or about August 15, 2008, Kumar spoke with RAJARATNAM on RAJARATNAM's cellphone.

c. On or about August 15, 2008, in New York, New York, RAJARATNAM caused Galleon Tech to purchase shares of AMD common stock.

(Title 18, United States Code, Section 371.)

COUNT FIVE

(Conspiracy to Commit Securities Fraud)

The Grand Jury further charges:

Relevant Entities and Individuals

29. The allegations contained in paragraphs 1 and 2 of this Indictment are repeated and realleged as though fully set forth herein.

30. At certain times relevant to this Indictment, Danielle Chiesi, a co-conspirator not named as a defendant herein, worked for a hedge fund called New Castle Partners ("New Castle"), which, in early 2008, was the equity hedge fund group of Bear Stearns Asset Management Inc. ("BSAM"). Following the acquisition of BSAM's parent company by JPMorgan Chase & Co. ("JPMorgan"), New Castle operated as a hedge fund affiliated with JPMorgan. At certain times relevant to this Indictment, New Castle had assets under management of approximately \$1 billion.

The Rajaratnam-Chiesi Insider Trading Scheme

31. From at least in or about July 2008 through in or about October 2008, RAJ RAJARATNAM, the defendant, Danielle Chiesi, and others known and unknown, participated in a scheme to defraud by disclosing Inside Information and/or executing securities transactions based on Inside Information pertaining to publicly traded companies, including, for example, Akamai Technologies, Inc. ("Akamai") and AMD. The means by which RAJARATNAM and Chiesi effectuated the fraudulent scheme included, for example, the following: Chiesi obtained Inside Information regarding Akamai from an employee of Akamai (the "Akamai Source"), and Chiesi and RAJARATNAM obtained Inside Information regarding AMD from Anil Kumar and/or other sources (the "AMD Sources" and, together with the Akamai Source, the "AMD/Akamai Sources"). The AMD/Akamai Sources disclosed the Inside Information in violation of duties of trust and confidence owed by the AMD/Akamai Sources to their respective employers, their shareholders, and/or their employers' clients. Chiesi communicated Inside Information regarding Akamai to RAJARATNAM. In addition, RAJARATNAM and Chiesi provided one another with Inside Information regarding AMD. RAJARATNAM caused Galleon Tech and Diversified to execute securities transactions on the basis of Inside Information obtained from Chiesi, earning a total profit of approximately \$3.5 million from the scheme.

The Conspiracy

32. From at least in or about July 2008 up to and including in or about October 2008, in the Southern District of New York and elsewhere, RAJ RAJARATNAM, the defendant, Danielle Chiesi, and others known and unknown, unlawfully, willfully, and knowingly did combine, conspire, confederate and agree together and with each other to commit offenses against the United States, to wit, securities fraud, in violation of Title 15, United States Code, Sections 78j(b) & 78ff, and Title 17, Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2.

Object of the Conspiracy

33. It was a part and an object of the conspiracy that RAJ RAJARATNAM, the defendant, Danielle Chiesi, and others known and unknown, unlawfully, willfully and knowingly, directly and indirectly, by the use of the means and instrumentalities of interstate commerce, and of the mails, and of facilities of national securities exchanges, would and did use and employ, in connection with the purchase and sale of securities, manipulative and deceptive devices and contrivances in violation of Title 17, Code of Federal Regulations, Section 240.10b-5 by: (a) employing devices, schemes and artifices to defraud; (b) making untrue statements of material fact and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and

(c) engaging in acts, practices and courses of business which operated and would operate as a fraud and deceit upon persons, all in violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2.

Means and Methods of the Conspiracy

34. Among the means and methods by which RAJ RAJARATNAM, the defendant, Danielle Chiesi, and others known and unknown, would and did carry out the conspiracy were the following:

a. The AMD/Akamai Sources misappropriated the Inside Information in violation of: (a) the fiduciary and other duties of trust and confidence that they owed to their respective employers, their shareholders, and/or their employers' clients; (b) the expectations of confidentiality of their respective employers, their shareholders, and/or their employers' clients; and (c) their respective employers' written policies regarding the use and safekeeping of confidential and material, nonpublic information.

b. The Akamai Source disclosed Inside Information regarding Akamai to Chiesi. The AMD Sources disclosed Inside Information regarding AMD to Chiesi or RAJARATNAM. RAJARATNAM and Chiesi provided one another with Inside Information regarding AMD, and Chiesi provided RAJARATNAM with Inside information regarding

Akamai, all with knowledge that the Inside Information had been disclosed in violation of the duties of confidentiality owed by the sources of the Inside Information to their respective employers, their shareholders, and/or their employers' clients, and with the understanding that RAJARATNAM, Chiesi and others would use the Inside Information to purchase and sell securities, and thereby receive substantial illegal profits.

c. RAJARATNAM and Chiesi, while in possession of the Inside Information that they knew had been misappropriated in breach of the duties of confidentiality owed by the AMD/Akamai Sources to their respective employers, their shareholders, and/or their employers' clients, purchased and sold securities based on such information and thereby received substantial illegal profits.

Overt Acts

35. In furtherance of the conspiracy and to effect the illegal object thereof, RAJ RAJARATNAM, the defendant, Danielle Chiesi, and their co-conspirators committed the following overt acts, among others, in the Southern District of New York and elsewhere:

a. On or about July 24, 2008, Chiesi called RAJARATNAM from New York, New York.

b. On or about July 25, 2008, in New York, New York, RAJARATNAM caused Galleon Tech to sell short approximately 138,550 shares of Akamai common stock, which traded under the

symbol "AKAM."

c. On or about September 30, 2008, RAJARATNAM spoke on the telephone with Chiesi, who was in New York, New York.

(Title 18, United States Code, Section 371.)

COUNTS SIX THROUGH TWELVE

(Securities Fraud)

The Grand Jury further charges:

36. The allegations contained in paragraphs 1-3, 6-7, 16-17, 20-21, 30-31, and 34-35 of this Indictment are repeated and realleged as though fully set forth herein.

37. On or about the dates set forth below, in the Southern District of New York and elsewhere, RAJ RAJARATNAM, the defendant, unlawfully, willfully and knowingly, directly and indirectly, by the use of the means and instrumentalities of interstate commerce, and of the mails and of the facilities of national securities exchanges, in connection with the purchase and sale of securities, did use and employ manipulative and deceptive devices and contrivances, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by (a) employing devices, schemes and artifices to defraud; (b) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices and courses of business which operated

and would operate as a fraud and deceit upon persons, to wit: (i) RAJARATNAM caused Galleon Tech and/or Diversified to execute the securities transactions listed below in the securities of: (a) Clearwire on the basis of material, nonpublic information he obtained from Rajiv Goel, and (b) Akamai, on the basis of material, nonpublic information he obtained from Danielle Chiesi; and (ii) RAJARATNAM executed the securities transactions listed below in the securities of PeopleSupport, on the basis of material, nonpublic information he obtained from a source at PeopleSupport:

COUNT	APPROX. DATE	SECURITY	TRANSACTION (AMOUNT APPROXIMATE)
SIX	March 24, 2008	Clearwire (CLWR)	Galleon Tech purchased 125,800 shares of common stock
SEVEN	March 25, 2008	Clearwire (CLWR)	Galleon Tech purchased 136,000 shares of common stock
EIGHT	July 25, 2008	Akamai (AKAM)	Galleon Tech sold short 138,550 shares of common stock
NINE	July 29, 2008	Akamai (AKAM)	Galleon Tech sold short 173,300 shares of common stock
TEN	July 30, 2008	Akamai (AKAM)	Galleon Tech sold short 86,650 shares of common stock and purchased 1,400 put options
ELEVEN	July 28, 2008	PeopleSupport (PSPT)	Rajaratnam purchased 15,000 shares of common stock

TWELVE	October 7, 2008	PeopleSupport (PSPT)	Rajaratnam purchased 30,000 shares of common stock
--------	-----------------	----------------------	--

(Title 15, United States Code, Sections 78j(b) & 78ff; Title 17, Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2, and Title 18, United States Code, Section 2.)

COUNT THIRTEEN

(Securities Fraud)

The Grand Jury further charges:

38. The allegations contained in paragraphs 1-3, 6-7, 23-24, and 27-28 of this Indictment are repeated and realleged as though fully set forth herein.

39. From in or about March 2006 to in or about July 2006, in the Southern District of New York and elsewhere, RAJ RAJARATNAM, the defendant, unlawfully, willfully and knowingly, directly and indirectly, by the use of the means and instrumentalities of interstate commerce, and of the mails and of the facilities of national securities exchanges, in connection with the purchase and sale of securities, did use and employ manipulative and deceptive devices and contrivances, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by (a) employing devices, schemes and artifices to defraud; (b) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices and courses of

business which operated and would operate as a fraud and deceit upon persons, to wit: RAJARATNAM caused Galleon Tech and/or Diversified to execute transactions in the securities of ATI on the basis of material, nonpublic information.

(Title 15, United States Code, Sections 78j(b) & 78ff;
Title 17, Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2, and Title 18, United States Code, Section 2.)

COUNT FOURTEEN

(Securities Fraud)

The Grand Jury further charges:

40. The allegations contained in paragraphs 1-3, 6-7, 16-17, and 20-21 of this Indictment are repeated and realleged as though fully set forth herein.

41. In or about April 2007, in the Southern District of New York and elsewhere, RAJ RAJARATNAM, the defendant, unlawfully, willfully and knowingly, directly and indirectly, by the use of the means and instrumentalities of interstate commerce, and of the mails and of the facilities of national securities exchanges, in connection with the purchase and sale of securities, did use and employ manipulative and deceptive devices and contrivances, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by (a) employing devices, schemes and artifices to defraud; (b) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which

they were made, not misleading; and (c) engaging in acts, practices and courses of business which operated and would operate as a fraud and deceit upon persons, to wit, RAJARATNAM caused Galleon Tech and/or Diversified to execute transactions in the securities of Intel on the basis of material, nonpublic information.

(Title 15, United States Code, Sections 78j(b) & 78ff; Title 17, Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2, and Title 18, United States Code, Section 2.)

FORFEITURE ALLEGATION

42. As a result of committing one or more of the foregoing securities fraud offenses, in violation of Title 15, United States Code, Sections 78j(b) and 78ff; Title 18, United States Code, Section 371; and Title 17, Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2, as alleged in Counts One through Fourteen of this Indictment, RAJ RAJARATNAM, the defendant, shall forfeit to the United States pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461, all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the securities fraud offenses, in an amount of at least approximately \$45 million.

Substitute Assets Provision

43. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

- (i) cannot be located upon the exercise of due diligence;
- (ii) has been transferred or sold to, or deposited with, a third party;
- (iii) has been placed beyond the jurisdiction of the court;
- (iv) has been substantially diminished in value; or
- (v) has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of said defendant up to the value of the forfeitable property described above.

(Title 15, United States Code, Sections 78j(b), 78ff;
Title 18, United States Code, Sections 371 and 981;
Title 21, United States Code, Section 853(p);
Title 28, United States Code, Section 2461;
and Title 17, Code of Federal Regulations,
Sections 240.10b-5 and 240.10b5-2.)

FOREPERSON

Preet Bharara
PREET BHARARA
United States Attorney

Form No. USA-33s-274 (Ed. 9-25-58)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v. -

RAJ RAJARATNAM,

Defendant.

INDICTMENT


S2 09 Cr. 1184 (RJH)

(Title 15, United States Code, Sections
78j(b), 78ff; Title 17, Code of Federal
Regulations, Sections 240.10b-5,
240.10b5-2; Title 18, United States Code,
Section 2)

PREET BHARARA

United States Attorney

A TRUE BILL.


Foreperson.

1/20/11

FILED INDICTMENT

COTT, USMT

Exhibit G

COUNTS, TRADES AND TRADE CHARACTERISTICS
(TRADES CHALLENGED ON NEWMAN GROUNDS ARE BOLDED)

Count	Trade(s)	Date	Trade Value	Intermediary	Insider/Tipper
One (Galleon Conspiracy)	ICST	June 2005	\$2,825,527	Adam Smith	Kamal Ahmed (at Morgan Stanley)
	AMD acquisition of ATI	Mar. 2006	\$22,938,866	Adam Smith	Kamal Ahmed (at Morgan Stanley)
	Xilinx	Nov./Dec. 2006	\$978,684	Raj R.	Kris Chellam (at Xilinx)
	Vishay	May 2008	No Trade Executed	Adam Smith	Kamal Ahmed (at Morgan Stanley)
	Goldman	Sept. 2008	\$4,641,555	None	Rajat Gupta (Goldman)
Two (Khan Conspiracy)	Polycom	Jan. 2006	\$482,960	Roomy Khan	Sunil Bhalla (Polycom)
	Hilton	July 2007	\$4,171,763	Roomy Khan	Deep Shah (Moody's)
	Google	July 2007	\$18,264,041	Roomy Khan	Shammara Hussein (Market Share Partners)
Three (Goel Conspiracy)	Intel (earnings)	Apr. 2007	\$2,481,271	None	Rajiv Goel (Intel)
	Intel (investment in Clearwire)	Mar. 2008	\$851,724	None	Rajiv Goel (Intel)
Four (Kumar Conspiracy)	AMD (acquisition of ATI)	Mar. 2006	\$22,938,866	None	Anil Kumar (McKinsey)
	AMD (Mubadala)	Mid to Late 2008	None	None	Anil Kumar (McKinsey)
	eBay	Oct. 2008	\$883,973	None	Anil Kumar (McKinsey)

Count	Trade(s)	Date	Trade Value	Intermediary	Insider/Tipper
Four (Kumar Conspiracy) (cont'd)	Business Objects	October 2007	None	None	Anil Kumar (McKinsey)
	Spansion	May 2008	No Trade Executed	None	Anil Kumar (McKinsey)
Five (Chiesi Conspiracy)	Akamai	July 2008	\$5,139,851	Danielle Chiesi	Kieran Taylor (Akamai)
	ATI (Mubadala)	Mid/Late 2008	None	Danielle Chiesi or Raj R.	Bob Moffatt (IBM) and Hector Ruiz (ATI) and Anil Kumar (McKinsey)
Six	Intel (investment in Clearwire)	Mar. 24, 2008	Same as in Count Three (Intel/Clearwire trade)		
Seven	Intel (investment in Clearwire)	Mar. 25, 2008	Same as in Count Three (Intel/Clearwire trade)		
Eight	Akamai	July 25, 2008	Same as in Count Five (Akamai)		
Nine	Akamai	July 29, 2008	Same as in Count Five (Akamai)		
Ten	Akamai	July 30, 2008	Same as in Count Five (Akamai)		
Eleven	People Support	July 28, 2008	\$102,143	None	Raj R.
Twelve	People Support	Oct. 7, 2008	\$49,806	None	Raj R.
Thirteen	ATI acquisition of AMD	Mar. 2006	Same as in Count Four (ATI acquisition of AMD)		
Fourteen	Intel (earnings)	Apr. 2007	Same as in Count Three (Intel earnings trade)		
Total	\$63,812,164		\$63,812,164		

Exhibit F

2406

13TFRAJ1 Trial

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 UNITED STATES OF AMERICA,

4 v.

09 CR 1184 (RJH)

5 RAJ RAJARATNAM,

6 Defendant.

7 -----x

8 New York, N.Y.
9 March 29, 2011
9 9:20 a.m.

10
10
11 Before:

11
12 HON. RICHARD J. HOLWELL

12
13 District Judge

13
14 APPEARANCES

15 PREET BHARARA
16 United States Attorney for the
16 Southern District of New York
17 JONATHAN R. STREETER
17 REED M. BRODSKY
18 ANDREW MICHAELSON
18 Assistant United States Attorneys

19 AKIN GUMP STRAUSS HAUER & FELD LLP
20 Attorneys for Defendant

20 JOHN M. DOWD
21 TERENCE J. LYNAM
22 MICHAEL STARR
23 MICHAEL STARR

24 ALSO PRESENT: B.J. KANG, FBI

25 SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

2489

13TFRAJ3 Smith - direct

1 (In open court)

2 THE COURT: Ladies and gentlemen, I'm going to give
3 you the instruction I've given you sometime in the past and
4 that is when this witness testifies to what Kamal said to him,
5 it is not being offered for the truth of what Kamal said, it's
6 only evidence that he said it. It's up to you to decide
7 whether or not in fact Kamal said it, but you can't take the
8 answer to accept the truth of the witness' testimony as to what
9 Kamal said. Proceed.

10 MR. MICHAELSON: Thank you, your Honor.

11 BY MR. MICHAELSON:

12 Q. What did Kamal Ahmed tell you about ICST?

13 A. He told me that they were in the process of being acquired
14 by another company.

15 Q. Who was in the process of being acquired?

16 A. ICST.

17 Q. Did he tell you the name of the other company?

18 A. Yes. IDTI, Integrated Devices Technology.

19 Q. Let's break it down. What was the name of the other
20 company?

21 A. It's called Integrated Devices Technology.

22 Q. What is IDTI?

23 A. That's that company's ticker symbol.

24 Q. So IDTI was going to acquire ICST?

25 A. That's correct.

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

2490

13TFRAJ3 Smith - direct

1 Q. What was the significance of learning that?

2 A. Well, the significance was that when a company gets
3 acquired, it's typically at a large premium to the current
4 price, stock price, so you could buy the shares of the company
5 that's going to get bought and make a lot of money if the
6 announcement comes.

7 Q. What is a premium?

8 A. A premium is a price that is higher than the current price
9 of the stock.

10 Q. So what in general is the impact of an acquisition on the
11 price of the stock of a company being acquired?

12 A. It's to cause it to go up.

13 Q. And here what was the company being acquired?

14 A. ICST.

15 Q. And when Ahmed told you about this, what was his position
16 at Morgan Stanley?

17 A. He was an investment banker in the technology group. I
18 believe he was a senior member of the team there.

19 Q. What was the significance of his position at that time?

20 A. The significance was that he would have access to this type
21 of information. I knew that because of the deals that we had
22 worked on and the types of information that I had seen when I
23 was at Morgan Stanley.

24 Q. When he told you about the IDTI acquisition of ICST, were
25 you an analyst at Galleon?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

2491

13TFRAJ3 Smith - direct

1 A. Yes.

2 Q. Did you cover either of these companies?

3 A. No, I did not.

4 Q. And at that time what had you heard about a possible
5 acquisition of ICST by IDTI?

6 A. I hadn't heard anything about it.

7 Q. What if anything did you do to determine whether this news
8 was already out there?

9 A. Nothing.

10 Q. What was your understanding as to whether Ahmed was allowed
11 to tell you about that deal?

12 A. I knew that he wasn't allowed to tell me about that.

13 Q. What did you do with this information that you obtained
14 from Kamal Ahmed?

15 A. I shared it with Raj.

16 Q. What did you tell Rajaratnam regarding the source of that
17 information?

18 A. I told him that it was from Kamal.

19 Q. At that time, what had you told Rajaratnam about Kamal?

20 A. That Kamal was one of my former colleagues at Morgan
21 Stanley.

22 Q. After the initial conversation with Kamal Ahmed about this
23 deal, did you have any further conversations with Kamal Ahmed
24 about the deal?

25 A. Yes. I had occasion to communicate with Kamal after the

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

2492

13TFRAJ3 Smith - direct

1 initial conversation about the deal.

2 Q. And what in general did you learn about the deal during
3 those subsequent communications?

4 A. He informed me that the deal was still progressing forward,
5 and at one point told me when he thought the deal would be
6 announced.

7 Q. What did you do with the subsequent updates?

8 A. I shared them with Raj.

9 Q. Why did you share them with Mr. Rajaratnam?

10 A. I thought that it was an important piece of information
11 that would potentially be money making, and I had nothing else
12 to do with it. I couldn't trade on my own, and I wasn't going
13 to tell anybody else. So I shared it with him.

14 Q. Why wouldn't you tell anybody else?

15 A. Because I knew that it was sensitive information.

16 Q. What was sensitive about it?

17 A. Well, the fact that I was learning about a deal in progress
18 that wasn't yet public was what was sensitive. And that it was
19 also going to -- any merger -- any piece of information about a
20 merger is sensitive in such that it can have a big effect on
21 the stock price if announced.

22 MR. MICHAELSON: Your Honor, may I approach?

23 THE COURT: Yes.

24 Q. I've placed before you Government Exhibit 2477. Do you see
25 that in front of you or on your screen?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

2493

13TFRAJ3 Smith - direct

1 A. Yes.

2 Q. What is this document?

3 A. This is an expense approval form. Any time that as an
4 employee of Galleon we traveled that was going to involve us
5 getting reimbursed for our expenses, we would need to submit a
6 form, this form, for approval prior to spending the money,
7 basically.

8 Q. What is the date on the form?

9 A. January 28, 2005.

10 Q. Does it relate to a Morgan Stanley conference?

11 A. Yes.

12 MR. MICHAELSON: The government offers Government
13 Exhibit 2477.

14 MR. LYNAM: No objection.

15 THE COURT: Admitted.

16 (Government's Exhibit 2477 received in evidence)

17 MR. MICHAELSON: Highlight where it says business
18 travel request form, Adam Smith.

19 Q. What are the reasons, the purposes for filling out this
20 form?

21 A. To make sure that any expenses were approved prior to
22 making them.

23 Q. And what does this indicate with respect to when you were
24 going to start traveling and when you were going to return?

25 A. I entered the dates February 24 to March 9th.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

2494

13TFRAJ3 Smith - direct

1 Q. And where were you going on this trip?

2 A. I was going to go to Asia, or I went to Asia and then to
3 the Morgan Stanley conference, which was in California. So I
4 flew back from Asia via California to New York.

5 Q. And how much was this trip going to cost?

6 A. I estimated \$17,500 at that time.

7 Q. Who was going to pay?

8 A. Galleon would reimburse my expenses.

9 Q. What is the Morgan Stanley conference that's referenced
10 here?

11 A. That's an annual conference that Morgan Stanley sponsors
12 for investors. They invited a number of companies in the
13 technology space to come and present their stories, and
14 investors come to meet with those companies.

15 Q. And you generally attend these conferences?

16 A. Yes. I attend it every year.

17 Q. There was one per year?

18 A. Yes.

19 Q. Did Kamal Ahmed attend these conferences?

20 A. Yes.

21 Q. At these conferences, what if anything did the companies
22 say about their current quarter or earnings information?

23 A. The opportunity for investors to interview the executives
24 of those companies would include a general discussion about how
25 their quarters were progressing, but typically and unless by

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

2507

13TFRAJ3 Smith - direct

- 1 Q. Could you read the subject line?
- 2 A. It's a forward, it says time line and attendance proposal.
- 3 Q. Directing your attention to the second page. Please
- 4 highlight just the title. Can you please read that Mr. Smith?
- 5 A. Golf diligence execution plan.
- 6 Q. What is the date there?
- 7 A. April 18, 2005.
- 8 Q. And towards the bottom of the portion that's been blown up,
- 9 do you see attendees from Doral?
- 10 A. Yes.
- 11 Q. Do you recognize any of the names down there?
- 12 A. Gregg Lang and Clyde Hussein.
- 13 Q. Who were they at this time period?
- 14 A. They were executives at those companies.
- 15 Q. Which companies?
- 16 A. ICST and IDTI.
- 17 Q. If we could zoom out and take a look at the next page of
- 18 this document and highlight week of May 16. What does it say,
- 19 Mr. Smith, under week of May 16?
- 20 A. It says "announcement."
- 21 Q. What is the date of this e-mail, the date on which this
- 22 e-mail is sent to Kamal Ahmed?
- 23 A. April 19.
- 24 Q. What does it say regarding the timing of the announcement?
- 25 A. That the announcement will be made May 16.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

2508

13TFRAJ3 Smith - direct

1 Q. Going back to Government Exhibit 2456, what is the date of
2 your e-mail to Mr. Rajaratnam?

3 A. It's two days after, on April 21.

4 Q. And what does your e-mail convey with respect to the date
5 of the announcement?

6 A. That it will be May 16.

7 Q. You mentioned that you and Mr. Kamal Ahmed were friends.
8 What if anything did you do to help his business?

9 A. I had a number of conversations with him through the time
10 that I was at Galleon about the market. I would tell him my
11 thoughts about what was going on in the market and what issues
12 there were in the marketplace with regard to certain stocks,
13 and I expected that he would use that information to help in
14 his communications with those executives to try and win
15 business. If he was better educated about current issues, he
16 would be more fluent and appear more experienced, I guess, when
17 speaking to those executives.

18 I also had provided some introductions to him to
19 executives of companies when he had requested one in
20 particular, and to the extent that I had conversations with
21 executives at technology companies and the subject came up, I
22 would tell them my thoughts, that he was a good banker and a
23 good person, a good person to do business with. I think that's
24 one category of things that I did.

25 At times after 2007 when Galleon had launched a fund

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

2509

13TFRAJ3 Smith - direct

1 which had some focus on private companies or companies that
2 were going to become public, I also helped Kamal to be part of
3 conversations with companies that Galleon was potentially
4 looking to invest in so that he could be part of those deals.

5 Q. So in that latter scenario Galleon was a potential client
6 of Mr. Ahmed?

7 MR. LYNAM: Your Honor, leading. Objection.

8 THE COURT: Sustained.

9 Q. In the second category of assistance that you discussed,
10 what was the relationship between Morgan Stanley and Galleon?

11 A. It wouldn't be that Galleon was a direct client, but more
12 of an indirect participant in a potential deal. If we were an
13 investor in a private company, we would have influence over
14 which bank was selected to represent that company were it to go
15 public. So while we wouldn't be the actual customer, we being
16 Galleon, there was a potential that we could influence the
17 decision about which bank was selected for any future deal.

18 Q. How would Galleon help Ahmed do his job, if at all?

19 A. Well, Ahmed's job was to win banking business, which
20 includes taking private companies public or being selected as
21 an advisor for capital raising or mergers and acquisitions.
22 The selection of advisers made by the companies' executives and
23 to the extent Galleon had any influence over the decisions of
24 those executives, we would help him do his job.

25 Q. What ultimately happened with respect to the acquisition of

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

2635

13U8RAJ1

1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 UNITED STATES OF AMERICA,

4 v.

09 CR 1184 (RJH)

5 RAJ RAJARATNAM,

6 Defendant.

7 -----x

8 New York, N.Y.

8 March 30, 2011

9 9:40 a.m.

10 Before:

11 HON. RICHARD J. HOLWELL

12 District Judge

13 APPEARANCES

14 PREET BHARARA

15 United States Attorney for the
16 Southern District of New York

16 JONATHAN R. STREETER

17 REED M. BRODSKY

17 ANDREW MICHAELSON

18 Assistant United States Attorneys

18 AKIN GUMP STRAUSS HAUER & FELD LLP

19 Attorneys for Defendant

20 JOHN M. DOWD

20 TERENCE J. LYNAM

21 ALSO PRESENT: B.J. KANG, FBI

22 SOUTHERN DISTRICT REPORTERS, P.C.

23 (212) 805-0300
24
25

2805

13U8RAJ5

Smith - cross

1 A. Correct.

2 Q. But you had conversations with people all day long about
3 what is going on in the market, right?

4 A. I did.

5 Q. So then he asked you, well, did you do something two years
6 later in 2007? Do you remember that?

7 A. I don't remember the specific time frame. I remember
8 testifying that I had made an introduction to an executive and
9 that I had said something nice about Kamal to another
10 executive.

11 Q. Well, you said that in 2007 you could help Kamal Ahmed, who
12 was working at Morgan Stanley, get some business by making some
13 introductions for him, right?

14 A. Yes, that's right.

15 Q. But you have no ability to determine what investment bank
16 gets hired on a particular deal, do you?

17 A. No. I had no ability at that time.

18 Q. In 2005, when you say that Kamal Ahmed gave you this
19 information, you didn't have a deal with him that you were
20 going to make introductions for him two years later, did you?

21 A. No, sir.

22 Q. Whatever Ahmed said to you in 2005 was just an inadvertent
23 comment, isn't that right?

24 A. Well, it turned out to be true. I don't remember saying
25 inadvertent comment. Those are your words.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

2806

13U8RAJ5 Smith - cross

1 Q. Isn't that what you told the lawyers that you met with in
2 2010?

3 A. No. I don't recall saying that. That is your word.

4 Q. It was not part of any agreement with Kamal Ahmed, where he
5 is going to tell you something, and two years later you're
6 going to make an introduction, because there was no agreement
7 with Kamal Ahmed like that, isn't that right?

8 A. What agreement did I not agree to?

9 Q. I am asking you, when you discussed this with Kamal Ahmed
10 in 2005, you did not have an agreement that two years later you
11 would make an introduction for him that would benefit him,
12 right?

13 A. No. I had not offered him any benefit for that information
14 that he gave me at that time.

15 Q. I am going to ask you some questions about Intel.

16 Am I correct, Mr. Smith, that with regard to Intel,
17 you did not think that Mr. Rajaratnam had any inside
18 information on Intel because he tended to lose money trading on
19 it as much as he made money, correct?

20 A. I don't agree with the premise of your question because
21 having inside information such as a revenue number doesn't
22 automatically mean that you make money trading stock.

23 Q. My question is, it was your opinion that Mr. Rajaratnam did
24 not have inside information on Intel because he lost money on
25 Intel as much as he made it, right?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

2807

13U8RAJ5 Smith - cross

1 A. No, that was not my testimony. My testimony was that he
2 did receive revenue data prior to its public release. It may
3 also be true that he lost money on the stock, but I don't see
4 the two as connected necessarily.

5 Q. When you met with the lawyers for Mr. Rajaratnam and
6 Galleon last year in 2010, before you negotiated a deal with
7 the government, didn't you tell them in those meetings that you
8 doubted that Mr. Rajaratnam had any inside information on Intel
9 because he tended to lose money as much as he made money on
10 Intel?

11 A. I don't remember saying that to those lawyers.

12 Q. You don't remember anything you said in that meeting to
13 those lawyers, you don't remember anything about Intel or
14 insider trading or what ICST was all about, you don't remember
15 any of that, is that your testimony?

16 MR. MICHAELSON: Objection, your Honor. Form.

17 THE COURT: Sustained.

18 A. I have testified that --

19 THE COURT: Wait for another question.

20 Q. Didn't you also tell the lawyers in that meeting, the
21 lawyers for Mr. Rajaratnam and Galleon, in 2007, that you did
22 not have any particular knowledge or expertise in Intel?

23 A. Did I tell them in 2007 that I didn't have any expertise in
24 Intel?

25 Q. Did you tell them in your meeting last year that you did

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

3102

1448RAJ1

1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 UNITED STATES OF AMERICA,

4 v.

09 CR 1184 (RJH)

5 RAJ RAJARATNAM,

6 Defendant.

7 -----x

8 New York, N.Y.

8 April 4, 2011

9 9:35 a.m.

10 Before:

11 HON. RICHARD J. HOLWELL

12 District Judge

13 APPEARANCES

14 PREET BHARARA

15 United States Attorney for the
16 Southern District of New York

16 JONATHAN R. STREETER

17 REED M. BRODSKY

17 ANDREW MICHAELSON

18 Assistant United States Attorneys

18 AKIN GUMP STRAUSS HAUER & FELD LLP

19 Attorneys for Defendant

20 JOHN M. DOWD

20 TERENCE J. LYNAM

21 MICHAEL STARR

22 ALSO PRESENT: B.J. KANG, FBI

23
24
25 SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

3126

1448RAJ1 Horne - direct

1 ticker symbol -- hereby retains Market Street Partners (MSP),
2 effective as of December 1, 2006, to provide investment
3 community consulting and investor relations services and advice
4 with respect to financial community relations, shareholder
5 relations and related matters."

6 Q. Can you turn to the second page of the document.

7 MR. STREETER: If we can blow up paragraph 5. Just
8 the first paragraph is fine.

9 Q. Can you read the first sentence there?

10 A. "GOOG will furnish to MSP certain material nonpublic and
11 confidential information concerning GOOG. As a condition of
12 receiving such information, MSP agrees to treat any information
13 concerning GOOG, which is furnished to MSP by or on behalf of
14 GOOG (herein collectively referred to as information) in
15 accordance with the provisions this agreement."

16 MR. STREETER: Can we move back out and look at the
17 first sentence in the next paragraph and blow that up, the
18 paragraph that begins MSP.

19 Q. Can you read that paragraph?

20 A. "MSP hereby agrees that the information will be kept
21 confidential by MSP and will not be disclosed to any outside
22 party except as so directed by GOOG. The provisions of this
23 paragraph shall survive the expiration or termination of this
24 agreement and for a period of five years thereafter."

25 Q. What exchange does Google trade on?

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

3127

1448RAJ1 Horne - direct

1 A. NASDAQ.

2 Q. Do you know an individual named Shammara Hussain?

3 A. I do.

4 Q. Who is Ms. Shammara Hussain?

5 A. We hired her as an analyst at Market Street Partners.

6 Q. When approximately did you hire her, in what year?

7 A. May 2007.

8 Q. I am showing you a photograph that's been marked for
9 identification as Government Exhibit 3624. Do you recognize
10 the person in that photograph?

11 A. Yes. That's Shammara Hussain.

12 MR. STREETER: The government offers 3624.

13 MR. STARR: No objection.

14 THE COURT: Admitted.

15 (Government's Exhibit 3624 received in evidence)

16 Q. Can you take a look at Government Exhibit 1531.

17 What is Government Exhibit 1531?

18 A. That's Shammara's resume that she gave us the day she came
19 to interview.

20 MR. STREETER: The government offers 1531.

21 MR. STARR: No objection.

22 THE COURT: Admitted.

23 (Government's Exhibit 1531 received in evidence)

24 Q. Looking at the top, first of all, can you tell us what
25 address she provided and what phone number?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

3128

1448RAJ1 Horne - direct

1 A. 43667 Skye Road, Fremont, California 94530. And her phone
2 is (510) 921-4190.

3 Q. Do you know that number independent of looking at this
4 resume?

5 A. I do. I phoned her on that number a number of times.

6 Q. Then can we look at the first several bullet points down
7 below.

8 Where was she working before she came to work at
9 Market Street Partners?

10 A. Prior to working with us she was at Stratix Asset
11 Management, which is a small hedge fund.

12 Q. Can you read the first two bullet points?

13 A. "Managing a personal stock portfolio while receiving
14 apprenticeship from a well-established hedge fund manager at
15 Stratix Asset Management.

16 "Extensive research and analysis on companies within
17 the tech industry."

18 Q. Can you continue reading?

19 A. "Attend investor conferences for tech companies as well as
20 one-on-one meetings with CEOs and CFOs of these companies.

21 "Maintained an impressive P&L ratio in my personal
22 account through my own technical and fundamental analysis.

23 "Networked with people within the hedge fund industry,
24 venture capitalists, employees within the tech industry, and
25 individual investors."

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

3135

1448RAJ1 Horne - direct

1 A. "At all times we are in possession of insider information,
2 which must be respected by all firm employees."

3 Q. Were firm employees permitted to trade based on the
4 information they learned from clients at Market Street?

5 A. No. They were precluded by owning any stocks of the
6 companies that we work with.

7 Q. Were they permitted to share the information that they
8 learned about clients from their work at Market Street with
9 individuals outside the company?

10 A. Absolutely not.

11 Q. Were they permitted to tip people so that they can trade on
12 that information?

13 A. Absolutely not. That's why we had all these documents in
14 place, for that very reason.

15 Q. What accounts did Ms. Hussain, what accounts was she
16 assigned to after she was hired?

17 A. She was assigned to Google, Visual Sciences and Ariba.

18 Q. What types of things did she do on the Google account?

19 A. On Google, she was the third person, there were three
20 people on the account, and she did a lot of backup work. She
21 did scanning for information in the press about the company,
22 doing some projects, looking at how the company was trading,
23 things like that.

24 Q. Did you have a distribution list within the company for
25 people who were working on Google?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

3136

1448RAJ1 Horne - direct

1 A. We did. Google at Market Street Partners had a
2 distribution list that went -- any documents that came to that
3 address went to the three people on the account.

4 Q. Those people included Ms. Hussain?

5 A. It did, yes.

6 Q. Directing your attention to the beginning of July 2007,
7 what information did you learn about Google's financial status?

8 A. I knew toward the end of the quarter that the company was
9 not going to achieve what the street expected for the quarter.

10 Q. What do you mean by what the street expected?

11 A. The sell-side analysts would have estimates on the company,
12 what they thought the company would do, how they would perform
13 for the quarter, revenues and earnings, net income and earnings
14 per share. Those numbers were put -- basically, an average was
15 taken, it was called first call, and that number, which was
16 referred to as a consensus number, is what the street would be
17 expecting the company to report at the end of the July.

18 Q. What did you know about the actual performance versus that
19 reported?

20 A. I knew that the company was going to fall short of
21 expectations of the consensus number.

22 Q. What did that mean in terms of the work that Market Street
23 Partners had to do with the three people working on the
24 account, what did they have to do in response to that?

25 A. We were spending a lot of time thinking about how we would

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

3137

1448RAJ1 Horne - direct

1 answer a lot of questions. This is the first time since Google
2 went public that they would have missed expectations, and
3 expectations were very high for the quarter. The street
4 actually thought they would exceed consensus as opposed to
5 falling short. So we spent a lot of time thinking of how we
6 would discuss the issues that contributed to the shortfall. We
7 started to draft the CEO's script and the CFO's script, and
8 also put together a document of what we called hot topics, the
9 key things the street would want to explore when they did learn
10 the numbers.

11 Q. Was Ms. Hussain part of that process?

12 A. Yes, she was.

13 Q. Was she included in the dialogue that you had inside the
14 company about that?

15 A. Inside the company, yes.

16 Q. Did she learn that Google was going to miss expectations of
17 the street that quarter?

18 A. Yes. She would have known that.

19 Q. And you said something about how Google had never missed
20 before. Can you explain what that means?

21 A. Sure. A lot of companies give guidance; they tell the
22 street what they expect to do for the following quarter.
23 Google did not give guidance. Since they went public, they
24 have never given guidance. So the analysts came up with their
25 own expectations, and they came up with a consensus number that

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

3138

1448RAJ1 Horne - direct

1 they would be expecting the numbers that the street expected
2 the company to report.

3 (Continued on next page)

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

3139

1449RAJ2 Horne - direct

1 Q. And how long had Google been a publicly traded company at
2 this point approximately?

3 A. I think it was about three years, I think. And they had
4 never missed expectations. So this was going to be a big
5 surprise.

6 Q. So they had about twelve quarters so far?

7 A. Correct.

8 Q. And was there anything else significant about Google's
9 history in terms of its earnings reporting?

10 A. They had always showed increasing operating earnings, every
11 quarter. And what we had started to call it, it was called
12 Eric's golden rule, referring to Eric Schmidt, who was the CEO
13 at the time. And this was the first time that the company
14 would break that rule basically. So that was one of the things
15 we were concerned about, was how the Street would react to the
16 fact that they were breaking Eric's golden rule.

17 Q. Was the fact that Eric's golden rule, they weren't going to
18 increase earnings, was that a fact that was publicly known or
19 was that a fact that was confidential?

20 A. It was absolutely confidential.

21 And the way the stock was appreciating during that
22 time showed that people did not expect them to meet. The stock
23 was going up, which meant that people had high expectations.

24 Q. Was the fact that Google was not going to meet with the
25 consensus expectations about its performance, in truth that it

3140

1449RAJ2 Horne - direct

1 wasn't going to meet that, was that a fact that was publicly
2 available or was that confidential?

3 A. No. It was absolutely confidential.

4 Q. Take a look at Government Exhibit 1519. What's this?

5 A. This --

6 MR. STREETER: Actually if we could start from the
7 bottom. If we could blow up the bottom half of the document
8 instead.

9 A. This was an article that had appeared -- as I said, one of
10 the Shammara's responsibilities was to be looking in the press
11 to see what the press was saying about Google. And she found
12 this article that talked about Google had hit an all-time
13 closing high, meaning it was the highest price the stock had
14 ever achieved since they had gone public.

15 Q. Let me stop you right there. Is this article forwarded to
16 you and your partner?

17 A. This was from Shammara. It went to me and also Nate, who
18 also worked on the Google account.

19 MR. STREETER: Government offers 1519.

20 MR. STARR: No objection.

21 THE COURT: Admitted.

22 (Government's Exhibit 1519 received in evidence)

23 Q. So what we're looking at on the screen right now is the
24 bottom half of this document; is that correct?

25 A. Yes.

3141

1449RAJ2 Horne - direct

- 1 So the article is referring to Google's market cap and
- 2 saying because the way the stock was going up, its market cap
- 3 was bigger than IBM; was getting close to Cisco.
- 4 So this was a very big move in the stock.
- 5 Q. So let's break it down. It's from whom?
- 6 A. It's from Shammara.
- 7 Q. And who -- what date is it sent?
- 8 A. Thursday, July 5.
- 9 Q. And by that time what did Market Street Partners know about
- 10 what was going to happen -- when was Google scheduled to report
- 11 its next earnings?
- 12 A. I believe it was July 19.
- 13 Q. So about two weeks after this?
- 14 A. Correct.
- 15 Q. What did Market Street Partners know about what was
- 16 actually going to be reported two weeks later?
- 17 A. We knew the numbers would miss expectations.
- 18 Q. And when is article dated?
- 19 A. July 5.
- 20 Q. The subject line of the e-mail, can you read that?
- 21 A. "Google closes at all-time high."
- 22 Q. And can you read the title of the article.
- 23 A. "Google hits all-time closing high; bigger than IBM;
- 24 closing in on Cisco."
- 25 Q. Can you read the sentence that begins "the search giant"

3142

1449RAJ2 Horne - direct

1 inside the article.

2 A. "The search giant today rose \$7.29 to \$541.63, a new
3 all-time closing high."

4 MR. STREETER: Can you blow up the top half of the
5 document.

6 Q. What's happening in the top half of the document here?

7 A. Well I forwarded it to Maria Shim at Google, who was our
8 internal IR contact, because I wanted her to see what we had
9 found. And as she said, "Sigh, great, fall from high levels, I
10 guess," because she also knew that the company was going to
11 miss expectations.

12 MR. STARR: Objection, your Honor, to what someone
13 else knew.

14 THE COURT: Rephrase the question.

15 Q. Why don't we focus on what you wrote there.

16 A. Sure. At the top I was telling her I was getting back to
17 her saying --

18 Q. Why don't we go ahead and read what you wrote. What's the
19 date on this?

20 A. Thursday, July 5.

21 Q. Can you read what you wrote.

22 A. "Um, yes. I think what may have been disappointing could
23 very well get very ugly due to all the new and most likely
24 momentum money that has jumped in over the past few weeks,
25 months."

3143

1449RAJ2 Horne - direct

1 Q. What are you referring to, "disappointing could well get
2 very ugly"?

3 A. Obviously, we knew the numbers were -- at this point, the
4 numbers were going to disappoint the Street. And because the
5 way the stock was moving, we assumed that there was a lot of
6 momentum money, and these are investors that come in maybe
7 right before the quarter, based on the fact that they thought
8 the company would have very good numbers, and were driving the
9 stock price higher so that when the company did disappoint it
10 was going to be -- it was going to fall from even a higher
11 point. And those kind of investors get out right away when
12 there's a disappointment.

13 Q. What does that mean in terms of what you anticipated would
14 happen to Google's stock when this news was made public?

15 A. It was going to drop hard; more than it would have even if
16 it hadn't been going up so fast.

17 Q. Can you take a look at Government Exhibit 1520. What's
18 this?

19 A. This was an e-mail -- one of the things we did for Google,
20 going into the quarter, was that we would come up with a grid.

21 We looked at all the analyst reports, all the written
22 reports on the company, what their expectations were in terms
23 of earnings, the numbers; and also just kind of what they were
24 looking for. And we would put this in a grid so that we knew
25 going into earnings what the expectations were and we could

3144

1449RAJ2 Horne - direct

1 help advise the company on how to answer those questions.

2 So, that's what -- Maria is referring to the grid that
3 Nate, my colleague, used to put together.

4 And then here Shammara had reviewed that grid, which
5 would have included all the financial estimates. And she said
6 there's a few concerns in the analyst round-up grid for Google
7 that are not addressed in the Q and A.

8 Q. What's the Q and A?

9 A. Again, going into the quarter, we would come up with a
10 document that had a lot of the questions that we felt the
11 Street -- the Street would ask based on the results. So we
12 would help develop answers to those questions.

13 Q. Did the Q and A include information at this time, July 6,
14 2007, about what Google thought it was going to be reporting on
15 July 19?

16 A. Absolutely. We were spending a lot of time dealing with
17 that issue, the fact that the numbers were not going to meet
18 expectations.

19 Q. And Ms. Hussain was working on that Q and A as well?

20 A. Yes, she was.

21 Q. Can you take a look at Government Exhibit 1523. What's
22 this?

23 A. As I said, we put together what we called the hot topics,
24 the key things that the Street would want to explore once the
25 press release, the earnings press release came out. So this

3145

1449RAJ2 Horne - direct

1 was the list of the key things we felt management should focus
2 on.

3 Q. Looking at the top of the document. When is it dated?

4 A. Monday, July 9.

5 MR. STREETER: Government offers 1523.

6 MR. STARR: One moment, please.

7 (Pause)

8 Your Honor, may we approach very briefly, sidebar?

9 THE COURT: Yes.

10 (Continued on next page)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

3146

1449RAJ2 Horne - direct

1 (At the sidebar)

2 MR. STARR: Just looking at the face of the document,
3 I don't know whether there's any evidence that Ms. Hussain
4 would receive or would have known.

5 MR. STREETER: She's going to testify that
6 Ms. Hussain, that's the distribution list, that the three of
7 them were on, Ms. Hussain and the two other people working on
8 the account.

9 MR. STARR: That's fine.

10 (Continued on next page)

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

3147

1449RAJ2 Horne - direct

1 (In open court)

2 MR. STREETER: Your Honor, I'm told I didn't offer

3 1520.

4 MR. STARR: There is no objection.

5 THE COURT: Admitted.

6 (Government's Exhibit 1520 received in evidence)

7 MR. STREETER: And I offer 1523.

8 MR. STARR: No objection.

9 THE COURT: Admitted.

10 (Government's Exhibit 1523 received in evidence)

11 Q. Looking at the top of this document --

12 MR. STREETER: Can we zoom back out, look at the whole
13 first page. So is this the hot topics document you were just
14 mentioning?

15 A. Yes, it is.

16 Q. Looking at the top of the document, what's the date?

17 A. Monday, July 9, 2007.

18 Q. And who is it from?

19 A. It is from me to Maria Shim at Google.

20 Q. Who is CCed?

21 A. Market Street -- Google at Market Street Partners which
22 would have been the internal distribution list I mentioned
23 before.

24 Q. Who were the recipients on that?

25 A. Myself, Nate, and Shammara.

3148

1449RAJ2 Horne - direct

1 Q. Those are the three people working on the engagement?

2 A. Correct.

3 Q. And this is Q207 earnings conversation call. Key messages
4 and hot topics. What's Q207 earnings conference call refer to?

5 A. To the second quarter earnings conference call. There
6 would be a press release and then followed by a conference
7 call.

8 Q. When does the second quarter actually end?

9 A. June 30.

10 Q. And you said the conference call was going to occur when?

11 A. I believe it was around July 19.

12 MR. STREETER: And can we go to the bottom of the page
13 and blow up the hot topics at the bottom.

14 Q. Could you read number one.

15 A. "Number one. Operating profit decline. Breaking Eric's
16 golden rule. Is the rule no longer a rule?"

17 Q. Can you unpack that for us?

18 A. As I talked about before, the company always had successive
19 sequentially, meaning quarter over quarter, increases in
20 operating income. And this is the first time since going
21 public they wouldn't.

22 So since they had always operated under that
23 principle, we wanted to explore should we be telling the Street
24 that they no longer should be relying on the company to be
25 increasing every quarter.

3149

1449RAJ2 Horne - direct

1 Q. And Eric's golden rule is a reference to what?

2 A. The fact that there would be increases every quarter in
3 operating income.

4 Q. Eric was who?

5 A. Eric Schmidt, CEO.

6 Q. So what he had -- what had he said, if anything, about that
7 to the public?

8 A. Since the company had gone public, that had been one of the
9 operating premises of the company; that they would always
10 increase earnings every quarter.

11 Q. What was going to happen when they did the announcement
12 this quarter?

13 A. They would be breaking that rule. Operating income would
14 be down. And that's going to be a big surprise.

15 Q. Was the fact that that was going to happen something that
16 was publicly known or was that confidential?

17 A. Confidential.

18 Q. Turn to the second page.

19 MR. STREETER: Blow up the top.

20 Q. What's it say in number three?

21 A. "Sharp deceleration in clicks growth 0.2 percent
22 quarter-over-quarter, 47 percent year-over-year.

23 Q. What does that mean in terms of how the earnings are going
24 to be?

25 A. Clicks growth is a key. As I said, it's an internet search

3150

1449RAJ2 Horne - direct

1 company. So clicks growth is a key indicator of how the
2 company is going to perform. So the fact that it's up -- it's
3 basically flat quarter-over-quarter. It was going to be very
4 surprising.

5 Q. What are clicks?

6 A. Clicks are when people actually do a search and click on an
7 ad.

8 Q. And number five, can you read that.

9 A. "Revenue growth slowing faster than anticipated. Six
10 percent sequential revenue growth. Historic low."

11 Q. Can you read number six.

12 A. "International growth slowing. Six percent sequential
13 revenue growth. Historic low. International revenues as a
14 percentage of total company revenues declined."

15 Q. Can you turn to Government Exhibit 1524. What's this?

16 A. This is the Q and A document that I referred to before.
17 This is when we looked at what the company would actually
18 report and help try to generate answers to the company's -- to
19 the questions that the Street would have about those results.

20 MR. STREETER: Government offers 1524.

21 MR. STARR: No objection.

22 THE COURT: Admitted.

23 (Government's Exhibit 1524 received in evidence)

24 Q. Who is this from?

25 A. This is from me again to Maria Shim, our contact within

3151

1449RAJ2 Horne - direct

1 Google. And I'm CCing the internal Google distribution list
2 within Market Street Partners.

3 Q. That includes?

4 A. Shammara.

5 Q. Now how many days are we away from the actual announcement?

6 A. We're still about ten days.

7 Q. And attached to this is the draft Q and A?

8 A. Yes.

9 MR. STREETER: Can you turn to the fourth page of the
10 document. Actually fifth page.

11 Blow up that box at the top down to the first
12 question.

13 Q. Can you explain at the bottom of the page, pro forma EPS.
14 Do you see that?

15 A. Yes.

16 Q. What is EPS?

17 A. That's earnings per share. That's a key number that the
18 Street would look to, to see how the company performed.

19 If you look at the top, it says actual; and then the
20 right-hand column is consensus.

21 MR. STREETER: Can we highlight those two words.

22 THE WITNESS: So as I said, consensus is the number --
23 it's basically an average of what the analysts on the Street
24 were looking for. That would have been a public number that
25 the Street -- Wall Street would look at that number versus the

3332

1458RAJ1

1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 UNITED STATES OF AMERICA,

4 v.

09 CR 1184 (RJH)

5 RAJ RAJARATNAM,

6 Defendant.

7 -----x

8 New York, N.Y.

8 April 5, 2011

9 9:20 a.m.

10 Before:

11 HON. RICHARD J. HOLWELL

12 District Judge

13 APPEARANCES

14 PREET BHARARA

15 United States Attorney for the
16 Southern District of New York

16 JONATHAN R. STREETER

17 REED M. BRODSKY

17 ANDREW MICHAELSON

18 Assistant United States Attorneys

18 AKIN GUMP STRAUSS HAUER & FELD LLP

19 Attorneys for Defendant

20 JOHN M. DOWD

20 TERENCE J. LYNAM

21 ALSO PRESENT: B.J. KANG, FBI

22 SOUTHERN DISTRICT REPORTERS, P.C.
23 (212) 805-0300
24
25

3448

145FRAJ2 Barnacle - direct

1 A. That's correct.

2 Q. And then the mobile number there, can we highlight that,
3 the mobile number down in the middle of the -- where it has all
4 the subscriber information. Could we blow that up a little
5 bit, the document? Let me ask you to look at Government
6 Exhibit 26 in evidence.

7 A. Okay.

8 Q. Blow that up. Did you use the Government Exhibit 282 now
9 in evidence relating to the phone records for 646-206-2040,
10 that cellular telephone number, to prepare, in part to prepare
11 this chart?

12 A. Yes, sir.

13 Q. Can you take us through this chart regarding certain
14 communications in February 2005?

15 A. Certainly. On February 10, 2005, at 6:29 there's a call
16 from the phone subscribed to Mr. Smith to the phone subscribed
17 to Mr. Ahmed that lasted approximately 9 minutes.

18 On February 17, 2005 at approximately 4:10 p.m., there
19 was a call from the phone subscribed to Mr. Ahmed to the phone
20 subscribed to Mr. Smith that lasted approximately three
21 minutes, and also on the 17th of February, 2005, at 8:51 p.m.,
22 there's a phone call from the phone subscribed to Mr. Smith to
23 the phone subscribed to Mr. Ahmed that lasted approximately two
24 minutes.

25 Q. Let me ask you can you put up Exhibit 2379 in evidence?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

3449

145FRAJ2 Barnacle - direct

1 Could you read the title of that chart?

2 A. This chart is titled Galleon Tech daily closing position in
3 Integrated Circuit System stock, ticker symbol ICST, from the
4 period February 1, 2005 through June 30, 2005.

5 Q. And again the left axis shows what?

6 A. The left access tells the number of shares long, the number
7 of shares that were held.

8 Q. And the bottom contains the dates?

9 A. That is correct.

10 Q. From this chart for the tech manager code GRC associated
11 with Mr. Rajaratnam, what's the first day of trading, of
12 purchasing in February 2005 shown on this chart with respect to
13 stock in ICST?

14 A. The first purchase by manager code GRC is on the 11th of
15 February, 2005.

16 MR. BRODSKY: Can we highlight that? Can we put this
17 side by side or up and down with Government Exhibit 26? Blow
18 up both of those portions?

19 Q. So what can you tell us the relationship in time between
20 the telephone call between Mr. Smith and Ahmed and Mr. Ahmed on
21 February 10, 2005 at 6:29 p.m. and the first purchases by the
22 tech manager code GRC in ICST?

23 A. All I can tell you from these two charts is that there's a
24 telephone call on the 10th of February at 6:29 p.m. and there's
25 a purchase the next day, which is the 11th of February 2005.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

3450

145FRAJ2 Barnacle - direct

1 Q. Let's talk about those purchases on February 11, 2005. I
2 want to show you what's in evidence as Government Exhibit 150-I
3 and 150-J. I'd like you to take a look at those and we'll put
4 up on the screen, if we can, 150-I first. Do you want to blow
5 up the top, the bottom? Thank you. Maybe we can blow up the
6 first half so we can read it. Thank you.

7 Can you tell us what these are, what records these are
8 in Government Exhibit 150-I?

9 A. Yes. These are Morgan Stanley & Company brokerage
10 statements for the Galleon Tech offshore fund.

11 Q. Highlight that. And in the upper right-hand corner it says
12 Morgan Stanley & Co. Incorporated. What does that mean?

13 A. That is the broker, the executing broker. I'm sorry, this
14 is the broker where the shares are held.

15 Q. What does it mean to be the broker where the shares are
16 held?

17 A. Firms use broker dealers to help them buy and sell
18 positions and then also to hold their positions, so in this
19 case Morgan Stanley & Company is the broker that is holding
20 positions for Galleon Tech's offshore fund and this statement
21 is just for the month of February, 2005.

22 Q. Would you go to the February 11th date, 11, 2005 in 150-I?
23 Tell us what page it appears on with respect to the trading in
24 ICST?

25 A. February 11 is page 26.

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

4514

14EFRAJ1

1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 UNITED STATES OF AMERICA,

4 v.

09 CR 1184 (RJH)

5 RAJ RAJARATNAM,

6 Defendant.

7 -----x

8 New York, N.Y.
8 April 14, 2011
9 9:20 a.m.
9

10 Before:

11 HON. RICHARD J. HOLWELL

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA

15 United States Attorney for the
16 Southern District of New York

16 JONATHAN R. STREETER

17 REED M. BRODSKY

17 ANDREW MICHAELSON

18 Assistant United States Attorneys

19 AKIN GUMP STRAUSS HAUER & FELD LLP

19 Attorneys for Defendant

20 JOHN M. DOWD

20 TERENCE J. LYNAM

21 MICHAEL STARR

22
23 ALSO PRESENT: B.J. KANG, FBI

24
25 SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

4717

14EFRAJ7 Jarrell - direct

1 reaction. That might indicate there are no talks. No comment,
2 well, there might be talks.

3 So you learn, the professionals learn these -- market
4 traders and professionals learn how to sort of figure out from
5 the body language and from these types of behaviors, you know,
6 whether or not something is going on.

7 Q. And after these events are observed, do analysts and market
8 observers write about them in their reports?

9 A. Oh, sure. Because, corporate takeovers generally when a
10 company buys another company, they pay a premium price. So if
11 you buy the stock, if you can buy the stock of a company that's
12 going to be bought at the market price and own it when one of
13 these acquisitions is made, you'll make money. Because the
14 acquisition price is usually much higher than the market price
15 on the market. Usually on average, over time, it's a
16 30 percent premium. So that's a big number and that's why
17 people, investors and professional traders spend so much time
18 and energy trying to anticipate which company is going to get a
19 takeover offer, because if you can anticipate it and buy that
20 stock, then you can do well for yourself for your investors.

21 Q. Are there ever incentives of companies that are being
22 acquired to informally disclose information about the
23 acquisition before it's formally announced?

24 A. Oh, sure.

25 Q. What would be a incentive for a company to do that?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

4718

14EFRAJ7 Jarrell - direct

1 A. Well, for example, suppose you're a buyer and you're
2 negotiating with a target company and the target company's
3 price is already run up in the market because the market
4 anticipates that it might get a deal. And you're the buying
5 company and you're trying to get this target to accept a lower
6 price rather than a higher one. And one of the things you
7 might do is leak to the market that, hey, we're not going to do
8 a deal with them. We're not going to do a deal. Well, then
9 the price falls and the target gets scared and their investors
10 get upset and their stockholders get upset and they put
11 pressure on them.

12 Q. Conversely, what if you're the target company that's going
13 to be acquired? Are there sometimes incentives for the target
14 company to informally disclose that they're a target because it
15 might affect their price?

16 A. Well, sure. Remember I said there's normally a 30 percent
17 premium over the market price. Well, sometimes the target has
18 incentives to leak to the market that they are indeed a
19 takeover target to cause the price to go up in the market.
20 Then you go back to the bidder and you say, hey, come on, my
21 price has gone up, you have to pay me more, I want 30 percent
22 above that.

23 So, you know, in the negotiations themselves there
24 can be incentives for one side or the other to leak the
25 information to create a strategic advantage in the

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

4719

14EFRAJ7 Jarrell - direct

1 negotiations. There's so much money at stake that those types
2 of advantages can be important.

3 Q. And are there any market signs that you can identify where
4 this phenomenon of informally disclosing information or leaking
5 information is apparent in the market?

6 A. Yes. However it leaks out, the telltale signs of it being
7 leaked out are stock price runup. The stock price of the
8 target will start to run up. There's no announcement of the
9 deal, but you'll see it move up.

10 What we do in our studies is after the fact of course
11 we know there are deals and we take all the companies where we
12 have deals and we look at them, and if you put them all in one
13 group and center them on the date they got this announcement of
14 a deal and put them all as a group you'll see as a group their
15 stock price moved up in the two weeks prior, and indeed by the
16 time the deal is announced on average 20 to 30 percent of the
17 purchase price of the acquisition has already been embedded in
18 the stock price of the target. So the first telltale sign is
19 stock price runup.

20 The other telltale sign is market volume. The trading
21 activity in the company will pick up. You'll see volume go up
22 in the two weeks prior to the deal and get higher and higher
23 and higher as you get closer to the formal announcement.

24 Q. Finally, what about the increase in option activity? Is
25 that sometimes significant?

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

4725

14EFRAJ7 Jarrell - direct

1 specific to the company?

2 A. Yes, sir.

3 Q. All right. Let's go to the first stock that we're going to
4 examine, AMD, which is the next slide that begins on 16.

5 A. Okay.

6 Q. Let's go to slide 17. Now, can you just set a frame of
7 reference and a context for what the allegation is and what you
8 did?

9 A. Yes. The alleged tip had to do with AMD spinning off its
10 semiconductor operations into a joint venture. This was, the
11 buzz words for this case were fabless or asset light, asset
12 smart. So this was the allegation about AMD. There was a
13 period of time when there was a lot of discussion about them
14 spinning off basically their fabrication plants, selling them
15 to a big investor and that was the transaction in question. So
16 this was actually announced on October 7, 2008, and the alleged
17 tip came on August 15, 2008 with a wiretapped intercept
18 involving Mr. Kumar.

19 Q. Let's go to slide 18. Did you review the publicly
20 available information about whether AMD was going to sell off
21 its fabrication facilities?

22 A. Yes. And this is a summary of the information that I'll
23 talk for a moment about this. On the left-hand side is simply
24 a count -- I found 22 stories. What I did was I searched, as I
25 said, the financial press in the period preceding, the period

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

4726

14EFRAJ7 Jarrell - direct

1 in question. You see on the right hand graph down below there
2 from April 1, 2008 through October 7, 2008. So over that
3 period I searched the financial press, all the publicly
4 available news for publicly available information that said
5 that it was likely or it would happen that AMD would indeed do
6 this fabless asset light transaction, and so I found 22 stories
7 of that nature.

8 Now, 17 analyst reports were discussing, again, this,
9 and so these are publicly available information that's related
10 to the tip in the sense that the tip allegedly said AMD is
11 going to do this transaction, and these analyst reports and
12 news stories are consistent with that. They're saying that AMD
13 is going to do this transaction.

14 Q. All right. Now, what do you have on the right-hand side of
15 slide 18? You have AMD stock price in that graph. Can you
16 just explain that?

17 A. Yes. Well, the blue line is AMD's stock price, daily stock
18 price over the period. So you can sort of see what that does.
19 The red dots are the news stories that I'm going to discuss
20 sequentially as we go through this. I'm going to do it very
21 quickly, but those are the stories that I'm going to do. We're
22 going to do one red dot at a time over the next slides.

23 Q. Let's go to the next slide --

24 A. Back up. Also for this slide we have for reference, the
25 arrow there, there's where the alleged tip came on August 15,

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

4727

14EFRAJ7 Jarrell - direct

1 right? And then the joint venture was announced all the way at
2 the end. So this slide kind of gives you a frame of reference
3 for when did the tip come, when was the announcement made, what
4 was the stock price doing and when did these news stories occur
5 relative to these key dates, so all of that information is
6 right there.

7 Q. So you found publicly available sources, stories and
8 analyst reports regarding the asset light strategy with AMD
9 before the alleged tip date of August 15?

10 A. And specifically, asset light chatter that was consistent
11 with the tip, where the tip was that it would occur.

12 MR. STREETER: Your Honor, could we have a sidebar?

13 THE COURT: Yes.

14 (Continued on next page)
15
16
17
18
19
20
21
22
23
24
25

4730

14EFRAJ7 Jarrell - direct

1 (In open court; jury present)

2 BY MR. LYNAM:

3 Q. Can you go to the next slide and can you describe the
4 information -- is the court reporter ready? I apologize. Can
5 we go to the next slide? Can you begin to take us through
6 then, what information you were summarizing here as we move
7 through the time line you developed?

8 A. Yes. Before I get to the first dot, the first slide here is
9 just indicating that in as early as April 2007 there are
10 publications about discussing this asset light business model.
11 So even before we get into my chart, there is a Bloomberg
12 transcript, Albany Times Union, there are stories and mentions
13 and discussions about this AMD going to adopt a so-called asset
14 light approach. So that's the first thing I'm noting is that
15 this is actually something that's in the public discussion
16 prior to the start of my chart.

17 Q. So in 2007 you found stories about that?

18 A. Yes, sir. That's like a year before the start of my chart.
19 I'm starting in April '08, and that's a year before.

20 Q. Let's go to slide 20, then?

21 A. That's the first red dot and this is a story, the Inquirer,
22 a story in the Inquirer April 7, '08 and what I did was I took
23 out the quote from the article that was the reason why I
24 selected it, and put it in this exhibit in the first place. So
25 the quote is AMD is going to go fables. That's this, you

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

4731

14EFRAJ7 Jarrell - direct

1 know, this jargon for selling off these fabricating plants,
2 they just call it going fabless. Spin off the fabs to a
3 separate company, that is exactly what they're going to do.
4 The real question is to whom, and that is easy, Abu Dhabi. And
5 it turns out that Abu Dhabi was indeed, that was the group that
6 did buy it. So this was as early as April 2, 2008.

7 Q. All right, let's go to the next slide. The next dot?

8 A. This is an analyst report FTN Midwest Securities, April 18,
9 2008 and the quote is Hector Ruiz. Hector Ruiz was the head of
10 AMD, reiterated, repeated AMD's move towards an asset smart
11 strategy, noting further progress and an intention to make a
12 formal announcement in the, quote, "near term."

13 Q. Let's go to the next slide.

14 A. Lehman Brothers -- Electronic News is reporting on a Lehman
15 Brothers -- Lehman Brothers is an analyst, big company that
16 does analyst reports, so Electronic News is reporting that
17 Lehman Brothers believes one approach the company could
18 consider may include selling its fabs to a third party such as
19 the Mubadala Development Company, which it is what they did.

20 Q. Is that the company from Abu Dhabi?

21 A. Yes.

22 Q. Let's move to the next slide. What did you find here?

23 A. This is another securities firm, JMP Securities and they
24 are saying AMD is making steady progress in announcing its
25 asset smart outsourced manufacturing strategy. Outsourced

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

4732

14EFRAJ7 Jarrell - direct

1 means once they sell the plants to this separate company, then
2 they're going to have to buy the components from the plant,
3 they'll buy the components as they go and they call that
4 outsourcing. We call that outsourcing in business. Also, when
5 you sell the plants in the first place, you will get money for
6 them. So AMD is hoping to sell the plants and get a lot of
7 money for the plants to the tune of, here it's estimated 1.5 to
8 \$2 billion cash infusion.

9 Q. This was reported in May?

10 A. Yes, sir. May 6, 2008.

11 Q. All right, let's go to the next slide.

12 A. Another Lehman Brothers, "we continue to believe a long
13 awaited asset light announcement could follow in the coming
14 weeks from AMD. We believe negotiations with a lead partner
15 ongoing." Now, this is in May 15 and we know after the fact
16 that the announcement was made in October, so and May 15,
17 they're thinking it's going to come, it's been long awaited,
18 it's going to come in a few weeks.

19 Q. All right, let's go to slide 25. What did you find there
20 in June?

21 A. Another Lehman Brothers, still, Lehman Brothers in June is
22 saying a high probability for a deal to be announced in the
23 next few months. So they continue to say that this is going to
24 happen. They're having trouble with knowing exactly when, but
25 they pretty much have it, they know what's going to happen and

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

4733

14EFRAJ7 Jarrell - direct

1 who's going to get it. "AMD management remains committed to
2 unveiling its asset light plans in calendar year 2008." And
3 presumably they're getting this from management.

4 Q. All right. Let's go to slide 26.

5 MR. STREETER: Objection, your Honor. Can I move to
6 strike that last statement?

7 THE COURT: Yes.

8 A. I'm sorry.

9 Goldman Sachs, which we heard a lot about, a source of
10 research and an important business company for Galleon, says,
11 their analysts say there continues to be speculation in the
12 market the Mubadala Development Company will increase its
13 investment in AMD by \$1 billion over the coming months.

14 Q. Let's look at slide 27. What did you find in July?

15 A. More stories that talk about this same upcoming
16 transaction. Analysts speculate that AMD will spin off its
17 global manufacturing operations, and that spinoff will require
18 a substantial investment from the governor of Abu Dhabi.
19 That's July 18 from the Austin American Statesman, and then
20 Midwest Securities, the research is saying we are promised that
21 asset light will be announced in the not-too-distant future.
22 These are coming in mid-July.

23 Q. Now, do you know any particular significance about a report
24 in the Austin American Statesman with regard to AMD? Do you
25 know where AMD's headquarters are and whether they have

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

4734

14EFRAJ7 Jarrell - direct

1 facilities in Austin?

2 A. Yes, they do. That's the significance.

3 Q. All right. Let's go to slide 28.

4 A. Lehman Brothers, which has been following this says
5 management says it's coming soon in, quote, "calendar year
6 '08," with CEO Hector Ruiz focusing on finalizing the asset
7 smart deal. So we're still in July.

8 Q. Let's look at slide 29. What did you find there?

9 A. The Inquirer says the likely suitor for AMD's manufacturing
10 operations is from Abu Dhabi. It's a done deal now, there's
11 just paperwork left to do. This is coming in July.

12 Q. All right, let's go to slide 30.

13 A. EE Times, company executives have hinted AMD is already
14 well into the implementation stage of the asset smart program.

15 Q. Does the word "implementation" there, how would you
16 analyze -- what is your opinion of what "implementation" means
17 in this document?

18 A. Well, "implementation" means --

19 MR. STREETER: Objection, your Honor.

20 THE COURT: The witness may answer.

21 A. Generally implementation means you're actually doing it,
22 you're actually doing things.

23 Q. Go to slide 31.

24 A. Now we're in August, Lehman Brothers believes negotiations
25 in asset smart strategy are ongoing with possible partners.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

4735

14EFRAJ7 Jarrell - direct

1 Q. All right, let's look at slide 32.

2 A. EE Times reports AMD's constant leaks about its asset light
3 plans are getting tiresome. By the time AMD announces its
4 asset light strategy, will anyone care?

5 Q. That was reported when?

6 A. August 8, 2008.

7 Q. Slide 33.

8 A. Business Week, which of course is a very prominent
9 financial publication. "A leading candidate in AMD's asset
10 light plan might be a sovereign wealth fund like Mubadala
11 Development."

12 Q. And Mubadala is the company from Abu Dhabi?

13 A. Yes, sir.

14 Q. Let's look at slide 34.

15 A. We get this from TG Daily. "AMD split rumors
16 accelerating." AMD split refers to this fabless transaction.
17 It's widely expected asset light will part AMD into two
18 companies. Critical decisions are being made at this time and
19 the official announcement will be made next month.

20 Q. What was the date of that report?

21 A. Now we're in August 12, 2008.

22 Q. Let's look at slide 35.

23 A. AMD's chief marketing officer fuels asset smart rumors.
24 That's in PC Magazine. JPMorgan announcement re: asset
25 light/asset smart just weeks away?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

4736

14EFRAJ7 Jarrell - direct

1 Q. What about slide 36? What did you find on August 13?

2 A. Now, this is two days before the alleged tip. Analysts
3 expect AMD to get a sizable infusion of cash from its partner
4 and that's from Reuters, a major news wire service.

5 Q. Okay. Let's look at slide 37.

6 A. Amtech Research, "We believe that asset smart will likely
7 be announced before the next earnings call."

8 Q. All right, let's go --

9 A. Earnings call refers to these quarterly earnings
10 announcements.

11 Q. Okay, let's go to slide 38 and focus on September. What
12 did you find then?

13 A. Jeffries & Company is, again, a big resource investment
14 company and they do a lot of research. "Sources indicate
15 fab-lite plan and cash buttress may be imminent." Cash
16 buttress is referring to the fact that they're going to get
17 money coming in when they sell the plans.

18 "Our channel checks indicate that AMD may announce its
19 official fab-lite strategy in two weeks." Channel checks,
20 normally what that means is analysts are talking to companies
21 that either supply the company or maybe buy products from the
22 company, so they're talking with people that aren't in the
23 company but that deal with the company. They call those
24 channel checks. And then, finally, "Middle East investment
25 group to contribute cash for stake in new foundry." All of

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

4737

14EFRAJ7 Jarrell - direct

1 that is being reported in September '08 by Jeffries.

2 Q. Is the foundry another name for the manufacturing facility?

3 A. Foundry is another name for these fabrication plants. In
4 fact, when they did the deal they named the new company that
5 owned them Foundry.

6 Q. Let's look at slide 39.

7 A. Bank of America, "Checks," again, checks, channel checks,
8 "suggest asset light transition is imminent." This is coming
9 after hours on September 7.

10 Market Watch after hours, "AMD appears to have begun
11 implementing its much-anticipated shift to an asset light
12 strategy."

13 Q. All right. Let's look later at September, slide 40. What
14 did you find there?

15 A. Again, Midwest Securities, which has been following this
16 says AMD's asset light plans could include Abu Dhabi's Mubadala
17 Development Company and the creation of a joint venture. Turns
18 out, that turns out to have been correct. "Contacts report
19 that AMD's Hector Ruiz met recently with New York's governor to
20 discuss contract modifications, which would allow AMD to
21 develop the New York facility with a partner."

22 One of the side benefits of this deal, if it were to
23 occur, was that AMD had a big plant in New York that it was
24 trying to update and had run short of cash, and this deal is
25 going to allow them to continue with that updating and the New

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

4738

14EFRAJ7 Jarrell - direct

1 York governor was interested in that, because that would create
2 jobs in New York State. When this plant was then updated they
3 could hire people and so that's what this is referring to.

4 Q. And now let's look at slide 41.

5 A. Again, Reuters, "Chief executive Dirk Meyer told Fortune
6 magazine this month," that Dirk Meyer, now the head of AMD at
7 this point in time, told Fortune magazine AMD will sell its
8 manufacturing plants known as fabs.

9 Q. So this actually quotes the chief executive of AMD saying
10 that they're going to sell these facilities before there was
11 actually a public announcement of it, formal announcement by
12 the company, is that right?

13 A. Yes. Yes.

14 Q. All right. Now, we've gone through a number of articles
15 and information. Let's go to slide 42. Can you kind of give
16 us a summary before you give us your analysis?

17 A. On the left I'm just giving highlights, bullet points from
18 what I just went through, all of these stories, and in my
19 judgment these are the highlights, AMD was pursuing an asset
20 light business model, they were expected to partner with Abu
21 Dhabi's Mubadala Development Company. Mubadala was expected to
22 increase its equity stake by 1-1/2 to \$2 billion. Quotes such
23 as, "we've begun implementing it," and "it's imminent" were in
24 the public domain prior to the official announcement. And on
25 the right we can compare that with the alleged tip information.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

4739

14EFRAJ7 Jarrell - direct

1 Q. All right, now, in your opinion, Professor, is the public
2 information that we've just seen consistent with an
3 event-driven hedge fund manager buying shares of AMD during
4 this period?

5 A. If you're an --

6 MR. STREETER: Objection, your Honor.

7 THE COURT: Counsel approach.

8 (Continued on next page)
9

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

4762

14F8RAJ1

1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 UNITED STATES OF AMERICA,

4 v.

09 CR 1184 (RJH)

5 RAJ RAJARATNAM,

6 Defendant.

7 -----x

8 New York, N.Y.

8 April 15, 2011

9 9:30 a.m.

10 Before:

11 HON. RICHARD J. HOLWELL

12 District Judge

13 APPEARANCES

14 PREET BHARARA

15 United States Attorney for the
16 Southern District of New York

16 JONATHAN R. STREETER

17 REED M. BRODSKY

17 ANDREW MICHAELSON

18 Assistant United States Attorneys

18 AKIN GUMP STRAUSS HAUER & FELD LLP

19 Attorneys for Defendant

20 JOHN M. DOWD

20 TERENCE J. LYNAM

21 MICHAEL STARR

22 ALSO PRESENT: B.J. KANG, FBI

23
24
25 SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

4866

14F8RAJ3 Jarrell - direct

1 that the deal will close, and that the buyer has cash and will
2 close the deal and pay 12.25, then when the stock price drops
3 to 9.25 on 10/7, that would be a great time to go long.

4 Q. Did PeopleSupport's buyer publicly report that it had the
5 cash to close the deal?

6 A. Yes.

7 Q. Did PeopleSupport's buyer publicly report that it was
8 looking even past this deal to the next deal?

9 A. Yes.

10 Q. And was the delay in closing of this transaction any actual
11 real delay compared to what was originally announced as the
12 closing day?

13 A. No, sir.

14 Q. All right. Let's look at the next stock, which is Google.

15 Look at slide 215. Can you tell us what the
16 allegation is here?

17 A. The allegation here is that Google's earnings will be
18 lower, so it's a negative alleged tip, and the allegation is
19 that the tip was received on July 13, which was six days prior
20 to the formal announcement of the earnings on July 19, 2007.

21 Q. Let's go to the next slide.

22 Did you identify information in newspapers and the
23 financial press and analyst reports that were pertinent to how
24 Google was doing that quarter?

25 A. Yes, sir. We are going to talk about some financial

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

4867

14F8RAJ3 Jarrell - direct

1 stories from the Wall Street Journal and Bloomberg, as well as
2 some analyst reports from Lehman Brothers, Merrill Lynch, etc.

3 Q. Again, you graphed out the price of Google stock on the
4 right?

5 A. Yes, sir.

6 Q. It looks like Google stock is a stock that trades in triple
7 numbers there, it's a 4 to \$500 per share stock?

8 A. Yes, sir.

9 Q. Let's look at slide 217. What did you find that was
10 relevant with regard to Google's quarter as reported on April
11 19, 2007?

12 A. Well, I think this sets the stage. Google at this time had
13 a reputation for being a real high-flying stock. It always
14 reported increasing growth and increasing earnings and the
15 stock price had been rising. And now here is kind of a warning
16 sign from AP Newswires on April 19 saying, "It has become more
17 difficult for Google to impress Wall Street because its stock
18 is scaling lofty heights," saying that the stock is so high and
19 Wall Street expects so much from Google, it might be hard for
20 Google to continue to satisfy Wall Street's lofty expectations.

21 Q. What was Google's stock price at around that time?

22 A. It looks to be about 4, \$470 I am looking at there,
23 approximately.

24 Q. Let's look at slide 218. What did you note there on May
25 23?

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

4868

14F8RAJ3 Jarrell - direct

1 A. The Wall Street Journal has a caution that there are still
2 warnings from analysts that Google's margins could erode from
3 competition from its big rivals. So competition causes price
4 decreases and profit decreases is what is being referred to
5 there.

6 Q. Let's look at the next slide. What did you find in the
7 late June time frame?

8 A. RBC Capital in June is saying, "We are cautious near term."
9 They are saying that the upside, meaning that the prospect for
10 better than expected reports, are minimal and likely already
11 priced into the stock, but there are some key short-term
12 negatives that could pressure Google's revenue.

13 Q. What does it mean that something is priced into the stock?

14 A. That is what we were referring to before about whether
15 information has already been impounded into the stock price or
16 not.

17 Q. The stock price already reflects these expectations of
18 Google?

19 A. Yes. That's what is being referred to by sophisticated
20 investors taking a variant view or a contrary view. They are
21 trying to figure out what information has already been priced
22 into the stock, and if they have information that they think is
23 different, or they have a different viewpoint, then that's how
24 they make their judgment about whether to go long or short.

25 Q. Let's look at the next slide. What did you find there that

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

4869

14F8RAJ3 Jarrell - direct

1 was pertinent in July?

2 A. Merrill Lynch in July is giving negative information
3 saying, "We assume EBITDA" -- that's a type of profit --
4 "margins will fall." And they are blaming it on Google
5 investing in partnerships and adding people and spending money.
6 Capex is short for capital expenditures. And Google is
7 increasing head count, hiring people, and spending money, and
8 they think that's going to reduce profit margins.

9 Q. Then you noted in the lower right-hand corner a Galleon
10 document that you identified. What is that?

11 A. Galleon's proprietary research, they are following this
12 internally, and the Galleon analyst has a near term Google
13 price target of 550. We have heard testimony about that. As
14 you can see from the chart, although it's not -- you can't tell
15 the exact number, but it would appear that Google's stock price
16 is very close to that \$550 target.

17 Q. Let's go to the next slide. What did you note there,
18 several hours before the alleged tip, being reported on July
19 13?

20 A. Lehman Brothers is reducing their EBITDA margin, so they
21 are reducing the profit margin projection, again, blaming the
22 increases in head count, the adding of people and the costs
23 associated with adding people.

24 Q. Adding employees?

25 A. Yes, sir.

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

4870

14F8RAJ3 Jarrell - direct

1 Q. This is actually going to lower their profitability for
2 this quarter?

3 A. In the short-term, yes, sir.

4 Q. OK. Let's look at slide 222. What did you note there that
5 Galleon had identified in its research?

6 A. They are saying, "Less enthusiastic, more cautious about
7 setup into this week's earnings print."

8 Q. What does "earnings print" mean?

9 A. That's analyst speak for the announcement of the earnings
10 itself.

11 Q. In addition to being less enthusiastic, what did you also
12 note that Galleon had identified with regard to the upside and
13 the downside?

14 A. Well, this Galleon researcher is saying, stock currently at
15 second half '07 target. So it's already at the second half '07
16 target of 550, making the near term risk reward less favorable
17 into print. So going into the earnings report, they are
18 thinking, look, this could go up maybe 15, but it could go down
19 40. So that's their way of quantifying what they think are the
20 risks. There is much more risk that it's going to go down than
21 an opportunity that it's going to go up.

22 Q. Then on slide 223, did you notice what another analyst
23 group said about the expectations here for Google?

24 A. Again, the consensus view is that expectations for Google
25 are high, it's a high-flying stock, and the concern here is

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

4871

14F8RAJ3 Jarrell - direct

1 that the expectations are high and will not be met. And if the
2 expectations are high and the reality is good but not
3 consistent with those high expectations, the price will fall.

4 Q. Let's look at the next slide. Did Bloomberg News report
5 something about whether those expectations could be met?

6 A. Yes. It's the same theme here from Bloomberg News on July
7 19. The stock is trading close to all-time highs, and that
8 sets the bar so high, the bar being expectations so high, that
9 it can be difficult to keep up with expectations. If that's
10 true, then the stock will decline. Then they are saying, stock
11 was selling off earlier today on chatter -- rumors -- that
12 earnings may disappoint expectations.

13 Q. This is on July 19?

14 A. Yes, sir.

15 Q. Let's go to slide 225. Did you prepare your summary of the
16 market information there?

17 A. Yes. That's my summary on the left, and then on the right
18 it can be compared with the alleged tip information.

19 Q. In your summary, you noted that it was trading at an
20 all-time high already, is that one of the things you noted
21 there?

22 A. Yes, sir. What I take away from that, and what these
23 analysts are cautioning about, is that the expectations are
24 high and the stock price is high, and that Google is going to
25 have trouble, or the concern is that Google's actual results,

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

4872

14F8RAJ3 Jarrell - direct

1 although good, will not be as high as the expectations,
2 therefore causing the stock price to drop.

3 Q. Professor, in your opinion, based on the public information
4 that you just described and you have just gone through, is that
5 consistent with a reasonably sophisticated investor selling the
6 stock of Google during this period?

7 A. Yes. Or shorting it or selling it. That type of analysis
8 would support that position, yes.

9 Q. Even though there was negative information in the market
10 about Google, did the market fully anticipate what the price of
11 Google would be after the earnings announcement?

12 A. No. The market was surprised.

13 Q. Let's look at slide 226. Did you do a market model for
14 Google?

15 A. Yes, sir, I did.

16 Q. Can you tell us what the expected market return was and the
17 excess return attributable to how Google was doing?

18 A. The market went down that day, so the expected return for
19 Google if it had no information would be minus 1.27 percent.
20 The actual return for Google on that day, the day of the
21 earnings report, was minus 5.19 percent. So it went down more
22 than we thought it would go down by 3.29 percent. So the
23 excess is minus 3.92 percent.

24 Q. Looking at the next slide, was that level considered
25 statistically significant?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

4873

14F8RAJ3 Jarrell - direct

1 A. Yes. You see the T-statistic there, ignoring the minus
2 sign, is greater than 2. So in my opinion, on this day, July
3 20, 2007, after the earnings announcement, Google's stock price
4 fell a statistically significant 3.9 percent.

5 Q. Even though there was this negative information in the
6 market, the market did not fully anticipate the price Google
7 would trade at and it did go down even lower on that day?

8 A. Yes. The market consensus it turns out was still too
9 optimistic prior to the announcement so they had to correct.

10 Q. Let's look at the next slide. Did you compare the
11 frequency of Mr. Rajaratnam's trading in Google in the period
12 that the government is alleging compared to his trading for the
13 prior 12 months?

14 A. Yes, sir.

15 Q. Give us, if you can, the number of shares on the left-hand
16 side.

17 A. 12 months prior Mr. Rajaratnam traded 2,054,800 shares,
18 compared with the shares involved in the alleged insider
19 transaction of 348,170 shares.

20 And in value terms, the trading in value 12 months
21 prior to the alleged tip is almost a billion dollars, 979.6
22 million. And the trading value of the transactions involved in
23 the alleged insider trades were \$191.8 million.

24 Q. So even before the period that the government is alleging,
25 Mr. Rajaratnam traded almost a billion dollars worth of Google

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

4874

14F8RAJ3 Jarrell - direct

1 stock in the prior 12 months?

2 A. Yes, sir.

3 Q. That concludes my questions about Google.

4 Let me now ask you about Hilton.

5 A. OK.

6 Q. Can you summarize the allegation there?

7 A. Yes, sir. Hilton is a takeover case. Hilton was acquired
8 in what is called a leveraged buyout by Blackstone, a private
9 equity company. The takeover was announced on July 3, 2007.
10 That was half of a trading day because it preceded a holiday.
11 The takeover was announced after the close of trading at 1:00
12 on July 3, and the alleged tip came the day before on July 2,
13 2007.

14 Q. Let's go to the next slide. Did you review public
15 information in the financial press and analyst reports that
16 were relevant to the takeover of Hilton that ultimately was
17 announced on July 3?

18 A. Yes, sir. There were six stories in the press and many,
19 many analyst reports were publicly discussing Hilton's
20 prospects of being a target of a leveraged buyout over this
21 period.

22 Q. Let's look at some of those stories that you found
23 beginning on slide 232. What did you find back in February?

24 A. Back in February, Bloomberg News was reporting about Hilton
25 LBO prospects saying, "The robust market for hotel acquisitions

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

4875

14F8RAJ3 Jarrell - direct

1 puts bond investors at risk if Hilton were to pursue a
2 going-private transaction."

3 The point here is that, as early as February, Hilton
4 was being discussed as a potential target of a particular kind
5 of transaction, a going-private or a leveraged buyout
6 transaction. That's a very specific kind of transaction. It's
7 not just a merger with another company, but it's a merger, a
8 buyout by a private equity company that is using lots of debt.
9 So it's a very specific kind of transaction, and it's already
10 being discussed as a potential target for that back in
11 February.

12 Q. So the potential target that was being discussed here was
13 not a public company, but rather a private company that does
14 not sell shares on the stock market?

15 A. Yes. The buyer would be a private company, like Kohlberg
16 Kravis, KKR, which is big one here in New York. These are big
17 companies and back in these days they were not publicly traded,
18 and they do very highly levered, they use a lot of debt when
19 they buy the company.

20 Q. They borrow money to buy a company?

21 A. They borrow -- 95 percent of the purchase price is debt.

22 Q. So in February, you noted articles that there may be
23 prospects that Hilton would be a target?

24 A. Yes.

25 Q. Let's go to slide 233. Did you identify more information

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

4876

14F8RAJ3 Jarrell - direct

1 suggesting that Hilton may be a target?

2 A. Yes. JP Morgan in late February, "Potential LBO target,
3 potentially attractive to private equity."

4 Q. Slide 234.

5 A. Again, continuing with this, Bear Stearns, another analyst,
6 is discussing the likelihood that Hilton will be sold or
7 bought. They are saying here -- notice the stock price is 35
8 or less. The price that these people are projecting is a
9 number like 40, 41, that's what I was seeing through this
10 period was 40, 41 was the projected price if there is an LBO.

11 Q. So there were public reports as to not only the possibility
12 that Hilton might be bought or sold, but what that price might
13 be?

14 A. Yes, sir.

15 Q. Let's look at slide 235. Did you find more reports?

16 A. Yes. Another analyst, Lehman Brothers, "Potential LBOs in
17 the lodging space." Hilton is considered a lodging company.
18 Space means industry. "Hilton has an LBO catalyst to support
19 its valuations." What it's saying there is the stock price of
20 Hilton is already building in or discounting some prospect of
21 an LBO.

22 Q. Let's look at slide 236. What did you note there about
23 Hilton's prospects for being acquired?

24 A. Here we go again. This is interesting because Hilton had a
25 poison pill in their capital structure which would guard

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

4877

14F8RAJ3 Jarrell - direct

1 against hostile takeovers. This poison pill expired, and
2 Hilton let it expire, got rid of it.

3 Q. What is the significant of letting a poison pill expire?

4 A. That's consistent with the company saying, we don't mind
5 being taken over, we would be happy to consider takeover
6 offers.

7 Q. Is that a signal to the market when these poison pills
8 expire --

9 A. It can be. It depends on the circumstances, but it's
10 consistent with that in.

11 Q. Let's look at the next slide 237. What did you find in
12 April?

13 A. Lehman Brothers is picking up on this elimination of the
14 poison pill. "It's almost like Hilton is asking for it," says
15 Lehman Brothers. They are saying what I was just saying.

16 "Continuing to have LBO rumors. If someone is ever going to
17 take a run at these companies, now certainly seems like the
18 time." These companies mean Hilton, Starwood, those are the
19 companies that are being discussed here.

20 Q. Starwood is another big hotel chain?

21 A. Yes. It has the symbol HOT for some reason.

22 Q. Let's look at slide 238. What did you note there?

23 A. Again, Bear Stearns in April, the same theme, they continue
24 to talk about these companies as potential LBO targets, private
25 equity being the type of a buyer.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

4878

14F8RAJ3 Jarrell - direct

1 Q. For both which two hotel chains?

2 A. For both Hilton and HOT, which is Starwood.

3 Q. Let's look at slide 239. What did you note there?

4 A. Morgan Stanley is giving a little finer point. They are
5 saying Hilton is a great leveraged buyout candidate because
6 Hilton has little leverage. Leverage refers to debt. So
7 Hilton has not much debt on its balance sheet. That's good for
8 a private equity firm that wants to buy the company. They are
9 going to use a lot of debt to buy the company. They want to
10 find a company that doesn't have a lot of debt already. So
11 that's good for LBO. JP Morgan, "Private equity eyeballing
12 public lodging companies."

13 Q. Let's look at slide 240. What did Citigroup note in May?

14 A. They are saying that, "We believe a number of investors own
15 Hilton based strictly on the prospect of a near term take
16 private transaction." Take private is another word for
17 leveraged buyout being purchased by a private equity company
18 that will take them private.

19 Q. Let's look at slide 241. What did Lehman Brothers note on
20 May 31?

21 A. Continuing to talk about Hilton and Starwood as potential
22 LBO candidates. "If Hilton or Starwood were to be LBO'd, you
23 are talking about major premiums to where the stocks are
24 trading now."

25 Q. Let's look at slide 242. What did Merrill Lynch say?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

4879

14F8RAJ3 Jarrell - direct

1 A. Merrill Lynch is again pointing to the private equity
2 interest will continue. "Demand is still far outstripping
3 supply." Private equity during these days had a lot of money
4 to invest and they were looking for targets. So that's a
5 demand, that's the money that they have to invest. Supply
6 would be, well, how many good investments are there? And they
7 say, "PE love good brands."
8 Q. PE is private equity?
9 A. Yes. So private equity buyers love good brands, they like
10 to buy companies that have good brands, and Hilton is a good
11 brand.
12 Q. Hilton has a famous brand name?
13 A. Yes, sir.
14 Q. Let's look at slide 243. What did you note there?
15 A. Continuing with the theme. Jefferies & Company is saying,
16 "Hilton is better positioned in the industry, yet continues to
17 trade at a significant discount. Should trade at a premium."
18 So Jefferies is recommending purchasing the stock
19 because its price does not reflect this possibility of a
20 takeover, and if you buy it at this price and there is a
21 takeover, you will do well.
22 Q. Look at slide 244. What did you note there about option
23 activity and what is the significance of option activity?
24 A. This is what I was talking about earlier about market
25 anticipation. And one of the things that is a sign of market

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

4880

14F8RAJ3 Jarrell - direct

1 anticipation, as well as a factor that causes people to
2 anticipate, is the observable trading in call options. Bear
3 Stearns alerted Galleon that there is a large trade in call
4 options on Hilton.

5 Q. What are call options?

6 A. Call options are securities that allow you to take a long
7 position in a stock, and they enable you to have a very, very
8 large exposure for a low investment.

9 Q. And a particular kind of option called a call option means
10 what?

11 A. A call option is you buy it, and it gives you the right to
12 buy at a particular price. So you buy a call option, which
13 gives you the right to buy a company in the future at a
14 particular price. If the stock price of the company goes up,
15 and I have the right to buy it at 10 bucks, and it goes up to
16 20, then that right becomes very valuable because I can buy it
17 at 10 and sell it at 20.

18 Q. So a call option is an indication you're expecting the
19 stock price to go up?

20 A. Yes. And it's a highly levered type of transaction, and
21 it's a type that favored by sophisticated investors who are
22 trying to make big, big gambles or big bets one way or the
23 other. So that's why Bear Stearns alerted Galleon, saying,
24 look, there is big trade in a call option, that could be
25 telling us something, that could be a clue.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

4881

14F8RAJ3 Jarrell - direct

1 Q. That there was a trade in Hilton call options?

2 A. Yes.

3 Q. That was four days before the alleged tip?

4 A. Yes, sir.

5 Q. Let's look at slide 245. What did you note there from
6 Jefferies & Company?

7 A. Jefferies & Company named Hilton their pick of the week.
8 That's saying this is a good company to buy.

9 Q. Let's look at slide 246. There you looked at the intraday
10 stock prices on July 3, the day the acquisition was announced?

11 A. Yes.

12 Q. Can you tell us what you noted during the course of that
13 day, July 3?

14 THE COURT: Mr. Lynam, we are not going to get through
15 Hilton now before lunch, so maybe this would be a good place to
16 stop and pick up with Hilton after lunch.

17 We will reassemble at 2:00.

18 (Jury exits courtroom)

19 THE COURT: 2:00, counsel.

20 (Luncheon recess)

21

22

23

24

25

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

4882

14FFRAJ3

Jarrell - direct

AFTERNOON SESSION

(2:05 p.m.)

THE COURT: Mr. Lynam.

MR. LYNAM: May I proceed, your Honor?

THE COURT: Yes, please.

BY MR. LYNAM:

Q. Good afternoon, Professor Jarrell.

A. Good afternoon.

Q. This afternoon we were looking at Hilton and we were up to slide 246, I believe. Could you put that up on the screen? Could you tell the ladies and gentlemen of the jury why you analyzed the intra-day stock prices on Hilton just on the one day July 3, 2007, the day of the announcement?

A. Yes, sir. This is my market anticipation analysis. This July 3 starts with trading at 9:30 in the morning and the trading on July 3 ended at 1:00, because it was a shortened session due to a holiday. You see the stock price, you can see with the blue line that's trade by trade by trade throughout the day and you can see that it's steadily rising throughout the day.

Q. Does this particular graph of the increase of stock price in your opinion reflect market anticipation for this announcement regarding Hilton?

A. Yes, it does. Consistent with the news that's being disclosed there.

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

4883

14FFRAJ3 Jarrell - direct

1 Q. Excuse me.

2 A. Yes.

3 Q. We have a little disturbance.

4 Could you just summarize what points you noticed on
5 market anticipation that day?

6 A. Well, you see the stock price is rising steadily throughout
7 this morning's session and Lehman Brothers is talking in the
8 morning at 10:00 about Hilton's LBO candidacy. Now, you see
9 the value coming in at the mid-40's. Prior to this, there has
10 been notations in the public record and the number was like 41
11 and this is a little higher, this is 45, mid-40's.

12 11:15, Bear Stearns is again talking about option
13 volume and as we'll see in a minute in another slide option
14 volume is very, very high in the morning session.

15 And then at 12:03, Wachovia reports this chatter
16 Blackstone -- Blackstone is the actual buyer of Hilton, and the
17 statement here, chatter, Blackstone looking at Hilton stock
18 rippin' -- that's trader speak -- increasing on heavy volume.

19 Q. Your horizontal line on the bottom, is that the clock time
20 during the day?

21 A. Yes, sir. That's the clock time. So 9:30 in the morning
22 on the left all the way up to 1:00 p.m., so that's the stock
23 price throughout the trading day.

24 Q. Let's look at the next slide. Is that your summary of
25 market information that you found relative to Hilton and

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

4884

14FFRAJ3 Jarrell - direct

1 whether it was likely to be acquired?

2 A. Yes. As we showed it prior to lunch, there were many
3 stories over that period of time over the public information
4 that named Hilton and specifically named them as being the
5 target of an LBO transaction, and done by a private equity
6 buyer, and all of that turned out to be true.

7 Q. Professor, in your opinion, is the public information we've
8 seen consistent with a reasonably sophisticated investor buying
9 Hilton stock during this period?

10 A. Yes, in anticipation of an LBO at a premium price, yes.

11 Q. Let's take a look at slide 248. Did you prepare a market
12 model for Hilton?

13 A. Yes, sir.

14 Q. Tell us again what you found there.

15 A. The market went up on this day, so the expected return for
16 Hilton was positive 3.84 percent, so we would expect a positive
17 return even if there was no news. The actual return on this
18 day is 25.91 percent, reflecting the announcement of the
19 takeover, so the excess return is the difference between those
20 two figures, which is 22.07 percent.

21 Q. All right, let's look at the next slide. Did you find
22 whether the stock price movement after the announcement was
23 statistically significant?

24 A. Yes, sir. You see the T statistic of 19.82 is greater than
25 2, so this statistic, this is a statistically significant

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

4885

14FFRAJ3 Jarrell - direct

1 increase in stock price on the announcement day. This is
2 July 5, 2007.

3 Q. So even though there was market anticipation of an
4 acquisition, the market did not fully anticipate the actual
5 price that the acquisition would go through at?

6 MR. STREETER: Object to the leading, your Honor.

7 THE COURT: Rephrase the question.

8 MR. LYNAM: I'll rephrase.

9 Q. Professor Jarrell, did you find that there was market
10 anticipation of an acquisition?

11 A. As we saw from the news stories, there was quite a bit of
12 information in the marketplace, expectation that Hilton was a
13 good candidate for a leveraged buyout by private equity. So I
14 think that the market anticipated to some degree the fact that
15 Hilton would be a candidate of an LBO. They couldn't be sure,
16 but there seemed to be quite a bit of anticipation of the fact
17 of a transaction in the near future.

18 What was not anticipated, I don't think, was the
19 actual deal price. This was a very rich deal. It was \$47.50,
20 which constituted a premium that was very high compared to
21 normal, and as we saw, the market was talking about numbers
22 that were more like 41. So I think the reason, the main reason
23 why you see this big stock price effect on the day was because
24 of the market learning about the high price as opposed to the
25 fact of the acquisition. That's my opinion.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

4886

14FFRAJ3 Jarrell - direct

1 Q. And the acquisition was actually announced, you said, at
2 \$47?

3 A. \$47.50 was the actual deal price.

4 Q. So the market began bidding the price of Hilton shares up
5 above \$45 by the end of the day?

6 A. Yes, sir.

7 Q. Now, let's take a look at slide 250. Did you analyze the
8 trading volume in Hilton shares on July 3 -- and in the days
9 leading up to July 3?

10 A. Yes, sir. That's what that chart shows. The trading
11 volume on the New York Stock Exchange in Hilton for the four
12 days, 6/28, 6/29, 7/2 and July 3, and you see that the trading
13 volume is 3.1 million, 3.6 million. On July 7 it's
14 3.8 million. And then on July 3, even though it's only a half
15 day session, it ends at 1:00, you see a big spike in volume
16 7-1/2 million shares traded in that shortened session. That
17 was the day when we saw that stock price rising on the
18 intra-day chart, steadily rising throughout the day,
19 Blackstone.

20 Q. During the course of July 3?

21 A. Yes, sir.

22 Q. Could you also look at the increase in option activity
23 associated with the Hilton acquisition?

24 A. Yes, sir.

25 Q. Let's go to the next slide. And again, what does option

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

4887

14FFRAJ3 Jarrell - direct

1 activity indicate to a sophisticated investor?

2 A. Well, as we discussed earlier, option activity can indicate
3 that sophisticated investors have information that anticipates
4 transactions.

5 Q. And what did you find with regard to the increase in
6 Hilton's option activity on July 2 and then in comparison to
7 July 3?

8 A. Well, if I just go through the whole chart.

9 Q. Sure.

10 A. You have every day's call option volume throughout the
11 period from June 15 through and including July 3. And the
12 black dotted line there is the average over that period and you
13 can see some days are higher and some days are lower.

14 First thing I'll note is on June 27, remember, we had
15 a story earlier that we discussed about Bear Stearns alerting
16 Galleon that a large trade in call options had turned some
17 heads. That's that day. So you see there evidence of the
18 large call option volume on that day consistent with that story
19 that we noted.

20 The other thing I want to notice is the huge increase
21 in option activity prior to the announcement on July 3rd, 2007.
22 Bloomberg News reported that Hilton's option volume and
23 volatility were elevated and indeed you can see visually that
24 it's quite elevated.

25 Q. And is that a signal to the market that a significant

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

4888

14FFRAJ3 Jarrell - direct

1 transaction affecting Hilton is underway or about to be
2 announced?

3 A. The increase in stock price over July 3, steady increase in
4 stock price, the increase in volume on the New York Stock
5 Exchange, the very heavy option volume, together with the
6 comments that we saw are all indications of market anticipation
7 or leakage of information, that news of the deal is in the
8 marketplace, at least to some degree.

9 Q. All right. Now, Professor Jarrell, most of the stocks that
10 we covered so far have been technology stocks. Hilton is a
11 hotel company. Did you review Mr. Rajaratnam's trades in
12 non-technology stocks to see if this was anything unusual for
13 him to be purchasing a non-technology stock?

14 A. Yes, I did.

15 Q. Let's take a look at slide 252. Would you tell us what you
16 found when you did your review?

17 A. Well, I went to the records and computed, first I divided
18 all of the stocks that he traded in into non-tech stocks versus
19 tech stocks, and that was based on SIC codes, which are
20 standard industrial classification codes, as well as the
21 descriptions of the companies themselves. Once I divided them
22 up into tech and non-tech stock, I then computed the
23 transaction value of trading in the tech versus the non-tech
24 and these are the results by year.

25 Q. And what did you conclude each year?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

4889

14FFRAJ3 Jarrell - direct

1 A. Well, the year by year differs, but on average about
2 20 percent of the trading volume is in non-tech, is in non-tech
3 stocks and 80 percent of the trading volume is in tech stocks.

4 Q. And these are trades that were made by Mr. Rajaratnam
5 during those years?

6 A. Yes, sir. Yes, sir. Core tech funds managed by Mr.
7 Rajaratnam, so these are the, this is the actual data. So if
8 one wants to know how rare or how common it is, I would simply
9 note that 20 percent of the transaction value of Mr. Rajaratnam
10 are in stocks that I think it's fair to say are non-tech
11 stocks, such as Hilton.

12 Q. And how many different companies did he have stock
13 transactions in during that period that were not technology
14 companies?

15 A. 246. Over this five-year period.

16 Q. Now, let's go two slides ahead and then we'll go back to
17 the one in between. Did you look at the frequency of
18 Mr. Rajaratnam's trading in Hilton before allegedly receiving
19 the government's allegation about receiving inside information
20 on Hilton?

21 A. Yes.

22 Q. Did you find any prior trading in Hilton in the prior 12
23 months before this particular transaction?

24 A. No.

25 Q. All right. Now, let's go back to the slide -- and 254, is

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

4890

14FFRAJ3 Jarrell - direct

1 that what's depicted there, that there was no prior trading in
2 Hilton before?

3 A. Yes. This is a one-time purchase and sale.

4 Q. Let's go back to slide 253. Did you study the frequency of
5 Mr. Rajaratnam's trading where he only was -- he had only
6 engaged in a transaction in a stock one time?

7 A. Yes.

8 Q. And what did you find when you did that review?

9 A. That that occurred with respect over the five-year period
10 2005 to 2009, there were 213 other stocks that were subject to
11 one-time only investments by Mr. Rajaratnam in other than
12 Hilton.

13 Q. And those investments could be either a buy or a short with
14 no additional investment activity in any other days?

15 A. Yes, sir.

16 Q. So Hilton was not the only time he purchased a stock just
17 one time?

18 A. No, sir, not over this period. It happened 213 times.

19 Q. All right. Let's move from Hilton now to Polycom. Slide
20 255, please. And let's go to the next slide and tell us what
21 the allegation is here?

22 A. The earnings announcement that we're discussing was
23 announced on 1/25, January 25, 2006, and the allegation is that
24 the tip was received January 1, 2006 concerning Polycom's
25 financial results and guidance.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

5155

14K8RAJ1

1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 UNITED STATES OF AMERICA,

4 v.

09 CR 1184 (RJH)

5 RAJ RAJARATNAM,

6 Defendant.

6 -----x

8 New York, N.Y.

8 April 20, 2011

9 9:35 a.m.

10 Before:

11 HON. RICHARD J. HOLWELL

12 District Judge

13 APPEARANCES

14 PREET BHARARA

15 United States Attorney for the
16 Southern District of New York

16 JONATHAN R. STREETER

17 REED M. BRODSKY

17 ANDREW MICHAELSON

18 Assistant United States Attorneys

18 AKIN GUMP STRAUSS HAUER & FELD LLP

19 Attorneys for Defendant

20 JOHN M. DOWD

20 TERENCE J. LYNAM

21 MICHAEL STARR

22 ALSO PRESENT: B.J. KANG, FBI

23
24
25 SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

5306

14KFRAJ4

Summation - Mr. Brodsky

1 Rajaratnam knows Goel is getting the benefits because
2 Rajaratnam is getting him the benefits, over \$700,000 in the
3 brokerage account and Mr. Goel is receiving some of those
4 benefits from Mr. Rajaratnam. For People Support it's the
5 defendant himself who is breaching the duty and he's the one
6 giving Mr. Goel the benefit. For Akamai, you know that Kieran
7 Taylor was breaching the duty and giving the information to
8 Ms. Chiesi, that's that call where Ms. Chiesi says Akamai is
9 going to guide down and you know from that call, you can go
10 back to and listen to it, and some of the other calls,
11 Mr. Rajaratnam knows, he's friends with Ms. Taylor and he knows
12 the relationship, he knows Taylor is giving those tips to
13 Chiesi because of that friendship.

14 Now, with regard to substantive counts, let's talk
15 about public and non-public. You also have to find with
16 respect to the substantive counts, not the conspiracy but the
17 substantive counts, that the information was not public. I
18 expect you'll hear from Judge Holwell and he'll instruct you
19 that the information isn't public simply because it appears in
20 a newspaper. If information is more specific and more private
21 than what appears in a newspaper, then it's not public, and if
22 the information is not generally available and the company
23 would not make it available in response to a request, it's not
24 public. Now, I think it should be clear from the evidence that
25 the information the defendant received relating to each of the

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

5307

14KFRAJ4

Summation - Mr. Brodsky

1 securities wasn't public. Merely because the defendant's paid
2 expert found news articles from the Inquirer and Tech Crunch
3 and some rumor attributed to some anonymous source and guessing
4 about some possible deal or earnings doesn't make it public.
5 If the information's more reliable, more specific, more
6 accurate than what you can get from some analyst report that
7 are all conflicting, then the insider is giving you information
8 that's not public.

9 Now, the defense through Mr. Jarrell's testimony and
10 Mr. Schutte's testimony it seems to be suggesting that every
11 illegal tip that Mr. Rajaratnam got, every single one was
12 already public. That doesn't make any sense. It's wrong to
13 assume that just because there's a single news story out there
14 from Bloomberg quoting an anonymous source from Focus Magazine,
15 which is quoting somebody else who's anonymous, has speculated
16 about a possible deal or quarterly earnings, that that makes it
17 public. If that were correct and there was some rumor out
18 there that Pepsi was going to take over Coca-Cola, every hedge
19 fund could go pay an insider at Pepsi, or an insider at
20 Coca-Cola, pay them a lot of money just because there was a
21 rumor out there, get the actual, real information, trade based
22 on that information, make a ton of money at the expense of all
23 ordinary investors and that's not the law.

24 Now, the professor didn't know the allegations well.
25 For example, on Clearwire, he didn't know that Goel was getting

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

5324

14K8RAJ5 Summation - Mr. Dowd

1 show him he is wrong.

2 You have seen in this case what a rough business this
3 can be. You saw how the prosecutors pressured Adam Smith, how
4 they threatened to break up his family, to the point that Smith
5 confessed to crimes he tells his friends he didn't commit.

6 The government called a series of witnesses just like
7 Adam Smith, witnesses who have been coerced to testify. You
8 saw Mr. Schutte and you can evaluate him for yourself. I
9 respectfully suggest to you that he was a straightforward and
10 honest man. You saw how he called it down the middle
11 throughout his testimony, direct or cross. He never changed on
12 direct and cross.

13 You compare Mr. Schutte to the government's witnesses.
14 How did Mr. Schutte stack up to Anil Kumar or Rajiv Goel or
15 Adam Smith? There is no comparison. That's why the government
16 had to smear him by suggesting there was something improper
17 about Raj's investment in Mr. Schutte's fund. That's absurd
18 and it should offend you too.

19 Raj hired Rick Schutte in 2004 because he was the best
20 in the business. Raj invested with Rick Schutte in 2010
21 because he still is the best in the business. That's all there
22 is to it. Nothing changed and there was nothing improper about
23 that investment. And, by the way, none of that has anything to
24 do with Mr. Schutte's testimony before you. None of that has
25 anything to do with the hundreds of Galleon documents Mr.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

5325

14K8RAJ5

Summation - Mr. Dowd

1 Schutte showed you, documents the government admits are
2 authentic.

3 I also told you the government was going to rely on
4 snippets of recorded conversations taken out of context, and
5 that's exactly what they did. But we have shown you the
6 factual context that you need to evaluate all the tapes the
7 government played. We have shown you the public information
8 and the Galleon analysis that Raj relied on when he made the
9 trades in issue in this case. We have shown you times when Raj
10 had taken a position before the recorded conversation. We have
11 shown you other times when Raj didn't trade at all, and when he
12 traded in the opposite direction of what was communicated on
13 the calls.

14 I told you the government was going to ignore what
15 things are like in the real world. I told you the government
16 was going to rely on fictions and plights of imagination to
17 make its case, and that is exactly what it has done.

18 The government's case rests on the fictional idea that
19 information can't ever become public until a company issues a
20 press release about it. But we have shown you that in the real
21 world, information can become public in all sorts of ways,
22 whether the company wants it or not and whether the company has
23 made a formal announcement or not. And the government can't
24 stand it. In the real world, there are billions of people
25 talking to one another. This is the media age, the age of the

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

5326

14K8RAJ5

Summation - Mr. Dowd

1 Internet, blogs and e-mail and instant communication. In the
2 real world, public companies are operating and functioning and
3 communicating in public, with the press, with investors, with
4 competitors, with customers, with distributors and with
5 government agencies. But in the government's imaginary world,
6 the only way to find out what is happening in Intel is to wait
7 for Intel to hold a press conference. That's ridiculous. It's
8 a fiction and you cannot convict Raj based on a fiction.

9 The government tries to say that all this public
10 information we have shown you is just speculation, like it is
11 worthless, like it doesn't count. But let's get real about
12 something. If the information is correct, then it's not
13 speculation and it's not rumor, it's news. And that's how
14 things become public in the real world.

15 Remember, Raj's business is all about predicting the
16 future and anticipating the market. It's all about gathering
17 all information available, analyzing it, and placing a bet on
18 where a stock is going to go. It's about distinguishing
19 between accurate predictions and inaccurate predictions.

20 The government's case also rests on the fictional idea
21 that Raj is supposed to know or is to assume that the people he
22 is talking to are giving out information they are not supposed
23 to give out, but the evidence shows that's not the case either.
24 In the real world, it is Raj's job to ask questions and gather
25 information. That's his duty to his investors, and Raj is

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

5335

14K8RAJ5

Summation - Mr. Dowd

1 company representatives and investors, such as on analyst days
2 or during one-on-one meetings. We showed you an example of
3 that with AMD's acquisition of ATI, where AMD's CEO, Hector
4 Ruiz, goes out talking to analysts about the deal as part of
5 regular biz before either company made an official
6 announcement. We showed you another example of that with
7 Intel's investment in Clearwire, where Intel was touting the
8 plan at its analyst day conference weeks before the
9 announcement.

10 It can even become public through rumors and chatter
11 and speculation in the marketplace, which results in the
12 information becoming impounded into the stock price. That's
13 something our expert witness, Professor Jarrell, talked to you
14 about. And that's something we showed you with AMD's
15 asset-light restructuring, which was so widely expected that by
16 the time it was officially announced in October 2008, AMD's
17 stock price didn't react at all and continued its downward
18 slide for the rest of the year. That's what impounded means.
19 The information was already reflected in the stock price and
20 the market didn't care when the company finally issued its
21 press release.

22 We have shown you that information at issue in this
23 case became public in all these different lights, in newspapers
24 and trade publications, published analyst reports, on the
25 Internet, through company communications with the market on

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

5336

14K8RAJ5

Summation - Mr. Dowd

1 analyst days, one-on-one meetings with analysts, through
2 chatter and speculation of the marketplace. It was never our
3 burden to prove this information was public, but we have proved
4 it. And the government hasn't even tried to prove that it
5 wasn't public. For that reason alone you must acquit.

6 And keep in mind all the instances where the
7 government hasn't even proved to you what the substance of the
8 alleged tip was. All the instances where the government
9 witness testified, I told Raj something, but I don't remember
10 what it was. Because if you don't know exactly what was
11 supposed to have been said to Raj, how can you evaluate whether
12 the information was public or not? You can't. The government
13 hasn't proven its case.

14 The government must also establish the other elements
15 of insider trading beyond a reasonable doubt. It must prove
16 that the information was material. Material simply means very
17 important or very significant. But as you assess whether a
18 particular piece of information was important or significant,
19 make sure you keep in mind all of the other information that
20 was available at the time, because a particular piece of
21 information might not be material if the same information or a
22 lot of similar information was already available.

23 For example, let's say somebody tells you that the
24 parties to a deal have shaken hands. That information might be
25 material if it was the only piece of information out there.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

5337

14K8RAJ5

Summation - Mr. Dowd

1 But it's not material if it's already public and you already
2 know that the parties have said they are implementing the deal.
3 That's what happened with the AMD asset-light deal.

4 You also need to ask yourself if the information is
5 specific enough to be material, because as Judge Holwell will
6 instruct you, information isn't material unless it's specific
7 enough to tell you something meaningful about the stock. For
8 example, if someone tells you that a company is going to
9 receive a term sheet in the next few days, that's not material.
10 Because if you don't know what the terms are, then the term
11 sheet isn't material. Or someone tells you the company is
12 losing two bucks a share, earnings per share, it tells you in
13 the middle of the quarter, a month before the quarter closes,
14 and two months before the quarterly earnings are announced,
15 that information is not material either because it's premature.
16 It's too early to tell what the earnings are going to be.

17 And ask yourself if the government has even put on any
18 evidence at all about what the alleged tip was, if you know the
19 substance of the information communicated to Raj. Because if
20 you don't, you can't assess whether the information was
21 material and the government hasn't proven its case.

22 So ask yourself those things when you assess the
23 information in this case. Was it significant in light of the
24 total mix of information out there? Was it specific enough to
25 be material? Has the government proven it was material beyond

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

5338

14K8RAJ5

Summation - Mr. Dowd

1 a reasonable doubt?

2 Another element that the government must prove beyond
3 a reasonable doubt is the alleged insider trading has breached
4 a fiduciary duty by disclosing the information for a personal
5 benefit. It's not enough for the government to show that
6 information came from an insider. It's not enough for the
7 government to show the company considered the information
8 confidential. The government must also prove that the insider
9 personally received something of value for the information.
10 And it's important that you test the government's evidence
11 carefully on this element because the government hasn't even
12 tried to show that many of the insiders in this case acted for
13 personal gain or that they received anything of value in return
14 for the information that they disclosed.

15 For example, the government hasn't shown or even tried
16 to show that Rajat Gupta, Kamal Ahmed or Kieran Taylor received
17 anything of value in return for their alleged tips. Even when
18 the alleged insider did receive something of value, at some
19 point in time the government hasn't shown that they received a
20 thing of value in return for the alleged tips.

21 For example, the government claims Anil Kumar provided
22 Mr. Rajaratnam with tips about business objects of AMD and eBay
23 and Spansion in 2007 and 2008. But they have presented no
24 evidence that Mr. Kumar received anything at all from these
25 supposed tips, and Kumar admitted that he received nothing.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

5339

14K8RAJ5

Summation - Mr. Dowd

1 Rajiv Goel admitted on the stand that there was no
2 nexus between the money he received from Raj and the
3 information he supposedly provided.

4 The government must also prove beyond a reasonable
5 doubt that Raj traded on the basis of material nonpublic
6 information. So it's important that you ask yourself whether
7 the government has proven beyond a reasonable doubt that Raj
8 traded on the basis of the alleged tips and not based on other
9 information. And the evidence shows that Mr. Rajaratnam traded
10 on the basis of public information, Galleon research, not on
11 the basis of any of these alleged tips. How do you know for
12 sure? For instance, you could tell that Raj did not trade on
13 the basis of a supposed tip if he had already taken a position
14 before receiving the tip. Like with Akamai, Polycom, Goldman
15 Sachs, AMD, where Raj had already taken his position in the
16 stock before the alleged tips.

17 You also have to consider all of the other information
18 Raj had when he made a trade. The government has to prove
19 beyond a reasonable doubt that Raj did not rely on that
20 information. He relied on the alleged tip instead.

21 For example, on Google, the government has to prove
22 beyond a reasonable doubt that Raj did not trade on the basis
23 of Steve Granoff's analysis setting a target price for the
24 stock.

25 On Goldman Sachs, the government has to prove that Raj

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

5340

14K8RAJ5

Summation - Mr. Dowd

1 did not trade on the basis of the analysis of his legislative
2 consultant who was reporting on the progress of the TARP
3 legislation.

4 Finally, the government must prove beyond a reasonable
5 doubt that Raj acted knowingly and willfully. And that means
6 the government must prove beyond a reasonable doubt that Raj
7 knew every one of the elements I just went through at the time
8 he placed his trade, and he acted with the intent to commit the
9 crime of insider trading.

10 As to the conspiracy counts, the key element the
11 government must prove is the agreement to commit the crime of
12 insider trading. If you find that Raj and his alleged
13 co-conspirator did not have an agreement to commit insider
14 trading, then you must acquit. For example, it's not enough
15 for you to find that Raj had an agreement with someone to seek
16 out information and then trade stock based on that information.
17 That's not the crime that Raj is charged with. That's not a
18 crime at all. It is legal to seek out information and trade
19 stock based on it. That's Raj's job. To convict you must find
20 he actually agreed with someone else to engage in the crime of
21 insider trading.

22 That's why all the elements of the insider trading
23 counts are also relevant to your consideration of the
24 conspiracy counts as well. Because if Raj didn't trade the
25 stock, it shows there was no conspiracy to engage in insider

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

5367

14LFRAJ1

1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 UNITED STATES OF AMERICA,

4 v.

09 CR 1184 (RJH)

5 RAJ RAJARATNAM,

6 Defendant.

7 -----x

8 New York, N.Y.

8 April 21, 2011

9 9:45 a.m.

10 Before:

11 HON. RICHARD J. HOLWELL

12 District Judge

13 APPEARANCES

14 PREET BHARARA

15 United States Attorney for the
16 Southern District of New York

16 JONATHAN R. STREETER

17 REED M. BRODSKY

17 ANDREW MICHAELSON

18 Assistant United States Attorneys

19 AKIN GUMP STRAUSS HAUER & FELD LLP

19 Attorneys for Defendant

20 JOHN M. DOWD

20 TERENCE J. LYNAM

21 MICHAEL STARR

22 ALSO PRESENT: B.J. KANG, FBI

23 SOUTHERN DISTRICT REPORTERS, P.C.

24 (212) 805-0300
25

5476

14L8RAJ4

Summation - Mr. Dowd

1 Intersil, ICST and Vishay -- that the government has offered no
2 evidence at all of any benefit to Kamal Ahmed. That's a
3 necessary element of insider trading. In the absence of any
4 evidence on it, it shows there was no insider trading and no
5 agreement to commit insider trading, and that's why you must
6 acquit.

7 Roomy Khan. The government also alleges that Raj
8 conspired with Roomy Khan to obtain material nonpublic
9 information about Google, Hilton and Polycom. But you never
10 heard from Roomy Khan. The government has the burden of
11 proving beyond a reasonable doubt that Roomy Khan and Raj
12 agreed with each other to commit insider trading. But all you
13 saw was a photo of Roomy Khan. You never heard from her. The
14 government, which has the burden of proof, never called Khan.

15 Khan wasn't the only person missing. You never heard
16 from any of Khan's supposed inside sources here. You never
17 heard from Shammara Hussain, Khan's supposed source at Google.
18 You never heard from Deep Shah, Khan's supposed source on
19 Hilton. And you never heard from Sunil Bhalla, Khan's supposed
20 source at Polycom. The government didn't call them. You have
21 no idea what any of these people said to Roomy because the
22 government presented no evidence of them. You have no idea
23 whether these people actually spoke to Roomy Khan, when, what
24 they talked about, because the government presented no evidence
25 of that either.

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

5477

14L8RAJ4 Summation - Mr. Dowd

1 Let that sink in for a minute. This is supposedly an
2 insider trading conspiracy, but you haven't heard from any of
3 the insiders or any of the co-conspirators. And there are no
4 recorded phone calls. The government just showed you charts of
5 telephone records. You saw that some of those were a minute or
6 less, and they may not have even connected. You don't know who
7 was on the calls or what they said to each other.

8 The government also put on some representatives from
9 the companies to talk about what was going on inside the
10 companies at the time. But the government provided you with
11 absolutely no evidence that any of the information was ever
12 passed to Raj. And you can't evaluate whether that information
13 was material or nonpublic because you don't even know what it
14 was. You can only make assumptions and you can't convict Raj
15 based on assumptions. The government hasn't proven its case.
16 They haven't even come close.

17 Let's talk about Google. The government alleges that
18 Raj sold and shorted Google in July 2007 after a call from
19 Roomy Khan. What you know from the evidence is that Market
20 Street Partners worked for Google and helped with its earnings
21 announcements, that Shammara Hussain worked at Market Street
22 Partners, that market Street was privy to the fact that Google
23 was going to miss its earnings when it announced its results on
24 July 19, 2007.

25 But then the government asked you to just take a leap

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

5478

14L8RAJ4

Summation - Mr. Dowd

1 of faith here. It showed you a chart, Government Exhibit 57.
2 They showed you this chart showing that Shammara Hussain and
3 Roomy Khan talked 150 times from January 2007 through July
4 2007. So what? JoAnn Horne from Market Street testified that
5 Hussain didn't even begin working there until May 2007. So all
6 the calls from January to May weren't even when she was working
7 there.

8 And the government isn't even contending that Shammara
9 Hussain had information about what Google would announce on
10 July 18 until after the quarter closed on June 30. Remember,
11 JoAnn Horne, the witness from Market Street, also told you that
12 Google starts to work on its upcoming announcement after the
13 quarter closes. 150 calls from January to July. That's a lot
14 of calls that have nothing to do with this case.

15 And there is no evidence, none, that Shammara Hussain
16 breached any duty of confidentiality. All Ms. Horne testified
17 about is that Ms. Hussain had access to confidential
18 information and the confidentiality policy at Market Street
19 Partners. She said nothing at all about whether Ms. Hussain
20 breached that duty or did anything wrong. The government has
21 shown you no evidence that she did.

22 The government showed you another chart, Government
23 Exhibit 58. The government showed you this chart and focused
24 on this 22 minute call from Roomy Khan to a Galleon number on
25 July 13. The government wants you to assume that Roomy was

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

5479

14L8RAJ4

Summation - Mr. Dowd

1 talking with Raj. The government showed you Raj's testimony to
2 the SEC, where Raj told them Roomy Khan was someone who used to
3 work at Galleon. So think about that. Roomy worked at Galleon
4 in years past. Surely she knows people there besides just Raj.
5 But did the government put Roomy Khan or anyone else on the
6 stand to tell you who Roomy was talking to for 22 minutes?
7 Remember, this wasn't Raj's number, it this was the Galleon
8 number. Was it a secretary who answered? We don't know who it
9 was and there is no evidence in the record for you to know.
10 And that, ladies and gentlemen, is a reasonable doubt. The
11 government hasn't proven its case.

12 The allegation boils down to the fact that Raj sold
13 Google shares on July 13 and shorted shares of Google from that
14 point until July 19 when it announced its earnings. We
15 explained why. We showed you the evidence. It's not Roomy
16 Khan and it's not inside information.

17 Remember what Mr. Schutte told you. He showed you the
18 trading data, that Raj traded Google for many quarters. This
19 wasn't some trade he made suddenly because Roomy Khan called
20 him. Remember Government Exhibit 61.

21 Call up 61, Joe.

22 This is a Google graph the government showed you.
23 They showed you that on July 13, Raj went from having a long
24 position to a short one. See where the bar graphs go from top
25 to bottom. We finished the story for you. We gave you the

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

5483

14L8RAJ4

Summation - Mr. Dowd

1 again. They want you to believe that Roomy Khan called and
2 told Raj something. Another leap of faith. Do you have any
3 evidence that Deep Shah told Roomy Khan anything about Hilton
4 being taken over? No. There is no evidence at all in this
5 case that Deep Shah ever breached any duty to Moody's, no
6 testimony about his telling Roomy Khan anything at all.

7 Do you know if Roomy Khan ever reached Raj when she
8 called, and if she did, what she said? Do you know whether
9 they just spoke about all of the public info that was out there
10 about Hilton being a takeover candidate? No. You have no idea
11 because the government hasn't called Roomy Khan or introduced
12 any evidence at all about what they said to each other, if
13 anything. They simply haven't proven their case.

14 The government showed you a summary chart, Government
15 Exhibit 52. Remember this graph showing Raj's purchase on July
16 3rd of 400,000 shares of Hilton. They left that big blank
17 space on the left to try to have you believe this purchase just
18 came out of left field. Well, you know it didn't come out of
19 left field. You know the 13F filings showed you that Galleon
20 had bought Hilton since January.

21 Joe, put up DDX 16.

22 The two blue bars show Galleon's positions in Hilton
23 as of the end of March and the end of June, as disclosed in the
24 13F filings. And you know that there was a mountain of public
25 information out there for anyone who was smart enough to follow

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

5485

14L8RAJ4 Summation - Mr. Dowd

1 Mr. Starr showed Ms. Holloway the government's price
2 and volume chart on Hilton. It was Government Exhibit 129T.
3 She read aloud the volume of Hilton trading for July 2 and July
4 3. She testified that the volume of Hilton shares traded
5 increased from 3.82 million shares on July 2 to 7.47 million
6 shares on July 3 before the market closed, and the
7 Hilton/Blackstone deal was announced after closing.

8 Professor Jarrell testified that trading in Hilton
9 options increased more than four times that day. Yesterday Mr.
10 Brodsky tried to dismiss that spike in options, arguing it was
11 just because Roomy Khan bought options. But if you look at the
12 government's own summary in GX 49, Roomy Khan only bought a
13 total of 650 options over July 2 and 3. It doesn't account for
14 the big increase in the general market of more than four times
15 in options volume that Professor Jarrell described to you.

16 Ladies and gentlemen, there was no secret about
17 Hilton. A smart investor would know that Hilton was ripe to be
18 taken over on July 3. It was a Jefferies pick of the week
19 recommendation, general trading volume in the market with
20 Hilton doubling in options trading, and Hilton skyrocketing to
21 more than four times its normal volume. If Raj hadn't bought
22 Hilton that day, you would have to ask yourself why not. He
23 bought it because it made sense to buy it, and he saw the
24 reports calling it low risk, with a potential higher reward if
25 it gets taken over.

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

5486

14L8RAJ4

Summation - Mr. Dowd

1 The government hasn't offered any evidence to support
2 its allegation that Roomy Khan told Raj about this deal. Not a
3 shred. It's utter unfounded speculation. You can't convict
4 Raj on the basis of speculation. You can only convict him
5 based on the evidence and the evidence shows that everyone knew
6 about this deal, and that's why you must acquit him.

7 Polycom. Let me talk to you about Polycom, the last
8 of Roomy Khan's stocks. The government alleges that Roomy Khan
9 obtained some material nonpublic information about Polycom from
10 Sunil Bhalla, who worked with Polycom, and then gave it to Raj,
11 and then Raj bought Polycom. The government never called Sunil
12 Bhalla to testify and never called Roomy Khan. There is no
13 evidence at all Mr. Bhalla ever breached his duty to Polycom,
14 none. There is no evidence at all that Mr. Bhalla told Roomy
15 Khan anything about Polycom. Not a shred. There is no
16 evidence that Roomy Khan told Raj anything that she heard from
17 Bhalla.

18 The government wants you to assume that when Khan sent
19 an instant message on January 9 to Raj and said, do not buy
20 Polycom until I get guidance, that means she must have passed
21 material nonpublic information to Raj when she called him the
22 following day. They want you to assume the information she
23 gave Raj was information she got from Sunil Bhalla. There is
24 no proof of any of that, none at all. And those conversations
25 weren't recorded and the government has offered absolutely no

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

5547

14L8RAJ6

Rebuttal - Mr. Streeter

1 Mr. Kumar. You also heard Mr. Rajaratnam and Mr. Gupta talking
2 about the investment on that July phone call. Mr. Gupta was an
3 investor in something called the Voyager fund at Galleon. He
4 was also a president of something called Galleon International.
5 He was also involved with Mr. Rajaratnam in this thing called
6 NSR, New Silk Route. He stood to benefit. Give information to
7 Mr. Rajaratnam, Mr. Rajaratnam makes more money. He benefits
8 from that. He is an investor in Galleon.

9 With respect to Mr. Chellam, the same thing. He was
10 an investor in Galleon. Give information to Mr. Rajaratnam.
11 He does better in the fund. I do better as an investor.

12 The same thing with Mr. Panu.

13 With respect to Mr. Gupta, it's not just that. It's
14 also the relationship. It's that thing I told you about, about
15 that intangible benefit of having a person who can do something
16 for you down the road if you do something for them now.

17 With respect to Kamal Ahmed, the same thing. We don't
18 need to prove it. ICST is not the subject of one of our
19 substantive counts. But, nonetheless, it's clear from
20 Mr. Smith's testimony that Mr. Ahmed and Mr. Smith were friends
21 and that they did things for each other. Mr. Ahmed gave
22 information to Mr. Smith. Mr. Smith introduced Mr. Ahmed to
23 important marketing contacts in the investment banking world.

24 Those, ladies and gentlemen, are an overview of the
25 things we need to prove to you with respect to the substantive

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

5571

14P8RAJ1

1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 UNITED STATES OF AMERICA,

4 v.

09 CR 1184 (RJH)

5 RAJ RAJARATNAM,

6 Defendant.

7 -----x

8 New York, N.Y.
8 April 25, 2011
9 9:40 a.m.
9

10 Before:

11 HON. RICHARD J. HOLWELL

12 District Judge

13 APPEARANCES

14 PREET BHARARA

15 United States Attorney for the
16 Southern District of New York

16 JONATHAN R. STREETER

17 REED M. BRODSKY

17 ANDREW MICHAELSON

18 Assistant United States Attorneys

18 AKIN GUMP STRAUSS HAUER & FELD LLP

19 Attorneys for Defendant

20 JOHN M. DOWD

20 TERENCE J. LYNAM

21 MICHAEL STARR

22 ALSO PRESENT: B.J. KANG, FBI

23
24
25 SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

5622

14PFRAJ2 Jury charge

1 is an issue of fact for you to decide.

2 In order to find that the insider you are considering
3 breached his duty of trust, you must also be persuaded beyond a
4 reasonable doubt on the count that you're considering that the
5 information disclosed was material at the time that it was
6 disclosed. Within the particular context of the purchase and
7 sale of securities, material information is information which a
8 reasonable investor would have considered significant in
9 deciding whether to buy, sell or hold securities and at what
10 price to buy or sell. Put another way, there must be a
11 substantial likelihood that the fact would have been viewed by
12 a reasonable investor as having significantly altered the total
13 mix of information then available.

14 The government must also prove beyond a reasonable
15 doubt that the insider who disclosed the information personally
16 benefited in some way, directly or indirectly, from disclosing
17 that information. Benefit may be monetary or financial. The
18 benefit, however, need not be a specific or tangible benefit
19 received in exchange for the information. It can also include
20 a reputational benefit that will translate into future
21 earnings, or the satisfaction which comes from making a gift to
22 a relative or friend. Evidence of the relationship between the
23 insider and the recipient of the insider's intention may be
24 circumstantial evidence that the insider receive a benefit.
25 But whether the insider benefited directly or indirectly,

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

5623

14PFRAJ2 Jury charge

1 tangibly or intangibly, remains a question of fact for you, the
2 jury, to decide.

3 To meet its burden of establishing an insider trading
4 scheme, the government must also prove beyond a reasonable
5 doubt that Mr. Rajaratnam knew that the information had been
6 disclosed by an insider in breach of a duty of trust and
7 confidence. The mere receipt of material, non-public
8 information by the defendant from an insider is not sufficient.
9 The government must show that Mr. Rajaratnam knew that the
10 information was material, non-public information that if
11 disclosed by an insider would directly or indirectly obtain
12 some personal benefit from the disclosure.

13 The government must prove beyond a reasonable doubt
14 that the defendant used material, non-public information in
15 connection with the purchase or sale of the stock identified in
16 the substantive count that you are considering. A person uses
17 material, non-public information in connection with a stock
18 purchase or sale if that information is a factor in his
19 decision to buy or sell. Now, how do you tell whether a person
20 who has material, non-public information and who buys or sells
21 a stock while in possession of that information uses the
22 information in doing so? Bear in mind that the law requires
23 only that the information be a factor in the decision to buy
24 and sell. It need not be the only consideration. Consider how
25 significant the information would be in deciding upon whether

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

14PFRAJ2

Jury charge

1 to buy or sell. It need not be the only consideration. In
2 many circumstances, the more important the information, the
3 more likely it is that the information was a factor in the
4 decision. If after considering all the circumstances you are
5 persuaded beyond a reasonable doubt that material, non-public
6 information given to the defendant was a factor, however small,
7 in the defendant's decision to purchase or sell stock, then
8 this element of the fraud will have been established.

9 I've talked about the proof of the existence of a
10 fraudulent insider trading scheme, which is the first element
11 of proving securities fraud. The second element of the
12 offenses charged in the substantive Counts Six through Fourteen
13 is that the defendant participated in the insider trading
14 scheme alleged in a particular count knowingly, willfully and
15 with the intent to defraud. Knowingly means to act voluntarily
16 and deliberately, rather than mistakenly or inadvertently.
17 Willfully means to act knowingly and purposefully with an
18 intent to do something the law forbids, that is to say with bad
19 purpose either to disobey or disregard the law. Intent to
20 defraud in the context of securities laws means to act
21 knowingly and with the specific intent to deceive. To devise a
22 scheme to defraud is to concoct or plan it. To participate in
23 a scheme to defraud means to associate one's self with it with
24 a view and intent to make it succeed.

25 The question of the defendant's intent is a question

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

Exhibit G

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
:
UNITED STATES OF AMERICA,
:
- v. -
:
RAJ RAJARATNAM,
:
Defendant.
:
-----x

S2 09 Cr. 1184 (RJH)

GOVERNMENT'S REQUESTS TO CHARGE

PREET BHARARA
United States Attorney for the
Southern District of New York
Attorney for the United States
of America

JONATHAN R. STREETER
REED M. BRODSKY
Assistant United States Attorneys
ANDREW Z. MICHAELSON
Special Assistant United States Attorney
Southern District of New York

- Of Counsel -

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
:
UNITED STATES OF AMERICA,
:
- v. -
:
RAJ RAJARATNAM,
:
Defendant.
:
-----x

S2 09 Cr. 1184 (RJH)

GOVERNMENT'S REQUESTS TO CHARGE

Pursuant to Rule 30 of the Federal Rules of Criminal Procedure, the Government respectfully requests the Court to include the following instructions in its charge to the jury.

REQUEST NO. 21Securities Fraud: First Element --
Scheme or Artifice To Defraud -- Benefit

If you find that, in connection with the stock you are considering for a particular count, RAJARATNAM traded based on material non-public information that was disclosed in breach of a duty, then you must determine whether the insider you are considering personally benefited in some way, directly or indirectly, from disclosing that information. The Government can establish that the insider you are considering benefited from his disclosure by showing that the insider received some tangible benefit, or that the insider would gain some future advantage, or that, based on the relationship between the insider and the person to whom he disclosed it, the insider gave the information with the intention to confer a benefit on the recipient, or as a gift, or to benefit himself in some other manner. You are permitted to base your finding of a benefit to the insider on all the objective facts and inferences presented in this case.

Adapted from the charges of the Hon. Richard J. Sullivan, United States v. Contorinis, 09 Cr. 1083 (RJS)(S.D.N.Y.); The Hon. Robert P. Patterson, Jr., in United States v. Naseem, 07 Cr. 610 (RPP); see also Dirks v. SEC, 463 U.S. 646, 664 (1983) ("there may be a relationship between the insider and the recipient that suggests a quid pro quo from the latter, or an intention to benefit the particular recipient. The elements of fiduciary duty and exploitation of non-public information also exist when an insider makes a gift of confidential information to a trading relative or friend"); SEC v. Warde, 151 F.3d 42, 48 (2d Cir. 1998)("[T]he Supreme Court has

made plain that to prove a § 10(b) violation, the SEC need not show that the tipper expected or received a specific or tangible benefit in exchange for the tip ... Rather, the 'benefit' element of § 10(b) is satisfied when the tipper 'intend[s] to benefit the ... recipient' or 'makes a gift of confidential information to a relative or friend.'"); SEC v. Sargent, 229 F.3d 68, 77 (1st Cir. 2000) ("the 'benefit' to the tipper need not be 'specific or tangible'... "maintain[ing] a useful networking contact" constitutes a benefit).

Exhibit H

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

RAJ RAJARATNAM,

Defendant.

S2 09 Cr. 1184 (RJH)

CHARGE TO THE JURY

1. Role of the Court.....	3
2. Role of the Jury	4
3. Government as a Party	6
4. Indictment Not Evidence, Burden of Proof, and Presumption of Innocence	7
5. Reasonable Doubt	9
6. Direct and Circumstantial Evidence	10
7. Inferences.....	11
8. Consider Only the Charges	12
9. Persons Not On Trial.....	13
10. Number of Witnesses Called	14
11. What Is and Is Not Evidence.....	15
12. Credibility of Witnesses.....	16
13. Interest in Outcome	19
14. Law Enforcement Witnesses	20
15. Character Testimony	21
16. Preparation of Witnesses.....	22
17. The Defendant's Right Not to Testify	23
18. Expert Testimony	24
19. Cooperating Witnesses	25
20. Cooperator Testimony—Guilty Plea.....	28
21. Stipulations of Fact	29
22. Summary Charts.....	30
23. Use of Recordings and Transcripts	31
24. The Indictment.....	32
25. Summary of the Indictment	33
26. Multiple Counts.....	35
27. Defendant's Theory of the Case.....	36
28. Securities Fraud: The Statute.....	38
29. The Statutory Purpose.....	39
30. Securities Fraud: Elements of the Offense	40
31. First Element: Insider Trading Scheme - General	41

31 - A. Insider Trading Scheme: Relationship of Trust or Confidence	44
31- B. Insider Trading Scheme: Breach of the Duty	45
31 - C. Insider Trading Scheme: Knowledge of the Breach	48
31- D. Insider Trading Scheme: Use of the Information	49
32. Securities Fraud—Second Element: Knowledge, Intent, and Willfulness	50
33. Securities Fraud—Third Element: Interstate Commerce	52
34. Conspiracy—Charges	53
35. Conspiracy—General Instructions	55
36. Conspiracy—Elements of the Offense	56
37. Conspiracy: First Element—Existence of the Conspiracy	57
38. Multiple Conspiracies	60
39. Conspiracy: Second Element—Membership in the Conspiracy	62
40. Conspiracy: Third Element—Overt Acts	65
41. Timing of Conspiracy	67
42. Venue	68
43. Punishment Not To Be Considered	69
44. Right to See Exhibits and Have Testimony Read during Deliberations	70
45. Improper Considerations: Race, Religion, National Origin, Sex or Age	71
46. Sympathy: Oath as Juror	72
47. Submitting the Indictment	73
48. Verdict Form	74
49. Selection of Foreperson	75
50. Conclusion	76

31 - C. Insider Trading Scheme: Knowledge of the Breach

To meet its burden, the government must also prove beyond a reasonable doubt that Mr. Rajaratnam knew that the information had been disclosed by an insider in breach of a duty of trust and confidence. The mere receipt of material, non-public information by the defendant from an insider is not sufficient. The government must show that Mr. Rajaratnam knew that the information was material nonpublic information that had been disclosed by an insider who directly or indirectly obtained some personal benefit from the disclosure.

Exhibit I

1

1ADHRAJ1

1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 UNITED STATES OF AMERICA,

4 v.

09 CR 1184 (RJH)

5 RAJ RAJARATNAM,

6 Defendant.

7 -----x

8 New York, N.Y.
8 October 13, 2011
9 10:35 a.m.
9

10 Before:

11 HON. RICHARD J. HOLWELL

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA

15 United States Attorney for the
16 Southern District of New York

16 JONATHAN R. STREETER

17 REED M. BRODSKY

17 ANDREW MICHAELSON

18 Assistant United States Attorneys

19 AKIN GUMP STRAUSS HAUER & FELD LLP

19 Attorneys for Defendant

20 TERENCE J. LYNAM

20 SAMIDH J. GUHA

21 JAMES SHERRY

22 ALSO PRESENT: B.J. KANG, FBI
23
24
25

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

1ADHRAJ1

1 (In open court)

2 THE DEPUTY CLERK: United States of America v. Raj
3 Rajaratnam.

4 Counsel, please state your name for the record.

5 MR. BRODSKY: Good morning, your Honor. Reed Brodsky
6 on behalf of the government. With me at counsel table are
7 assistant U.S. attorneys Andrew Michaelson and Jonathan
8 Streeter, and special agent B.J. Kang of the FBI.

9 THE COURT: Good morning, counsel.

10 MR. LYNAM: Good morning, your Honor. Terence Lynam
11 for Mr. Rajaratnam. With me is Mr. Rajaratnam, Samidh Guha,
12 and James Sherry.

13 THE COURT: Good morning, counsel. Good morning,
14 Mr. Rajaratnam.

15 I have received and reviewed the presentence report,
16 including the addendum and the sentencing recommendation of the
17 probation officer, all approved on September 20, 2011. I have
18 also received and reviewed the series of memoranda filed by
19 counsel for the government and counsel for the defendant, the
20 attached declarations and exhibits, as well as 200 or more
21 letters received from the defendant's family, friends and
22 associates and public third-party letters as well.

23 Mr. Lynam, have you had the opportunity to review the
24 presentence report and discuss it with Mr. Rajaratnam?

25 MR. LYNAM: Yes, your Honor, we have.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

1ADHRAJ1

1 THE COURT: Mr. Rajaratnam, have you had the
2 opportunity to review that report and discuss it with Mr.
3 Lynam?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Do either of you have any objections to
6 the factual recitations in the report?

7 MR. LYNAM: None other than the ones we noted
8 previously in our memorandum, your Honor.

9 THE COURT: Mr. Brodsky, does the government have any
10 objections to the factual recitations in the report?

11 MR. BRODSKY: No, your Honor, other than what we have
12 submitted to the court.

13 THE COURT: At this point I will ask Mr. Lynam if you
14 could address the issue of what a fair and just sentence is in
15 the case and address the recommendations made by the probation
16 officer.

17 MR. LYNAM: Thank you, your Honor. Your Honor, we
18 appreciate the court's thoughtfulness and fairness throughout
19 this long case and we appreciate the careful consideration that
20 the court has given to the sentencing issues, particularly the
21 opportunity to submit the various briefs at the hearing last
22 week. So I won't be going through all that again.

23 This case has had a lot of attention focused on it.
24 There has been media coverage nonstop. But we are confident
25 that the court will rise above all that and impose a sentence

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

1ADHRAJ1

1 that is fair and just under the law, a sentence that gives fair
2 weight to all the factors in the statute, Section 3553,
3 particularly the history and characteristics of the defendant,
4 a sentence that is sufficient but not greater than necessary to
5 comply with the purposes of sentencing.

6 The information that we provided the court and is now
7 contained in the presentence report provide a great deal of
8 insight into the history and characteristics of Raj Rajaratnam.
9 The letters that were submitted to the court by hundreds of
10 people all over the world describe the real Raj Rajaratnam. He
11 is the person whom I have come to know over the past two years,
12 a very kind, considerate, polite, generous and caring person, a
13 man genuinely concerned about helping others. I would like to
14 quote from a few of the provisions that the probation office
15 put in the presentence report about Mr. Rajaratnam.

16 The report says: "Mr. Rajaratnam cares deeply about
17 leaving behind a better world than the one to which he was
18 born." The report says that his charitable efforts go far
19 beyond his ability to write a check. The report said: "He
20 truly cares about the causes he champions, wants to see
21 children receive good educations, wants to help those struck by
22 natural disasters, and wants to help provide others with the
23 advantages that he was able to enjoy in his own life." Those
24 are not my words; those are the words that the Probation
25 Department put in the presentence report.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

1ADHRAJ1

1 As the court has learned, his compassion and
2 generosity have manifest themselves in many ways, from serving
3 on the board of the Harlem Children's Zone here in New York
4 City, a very worthwhile organization, to providing millions of
5 dollars to worthwhile organizations and individuals around the
6 world, from supporting global efforts like fighting AIDS and
7 poverty and natural disasters to helping needy individuals pay
8 for their cancer treatment or their children's education.

9 Raj Rajaratnam has attempted to make the world a
10 better place. If there is a ledger of one's life, he should
11 have some credit in that ledger to draw upon now that things
12 have gone bad.

13 Many of the people who love and support Mr. Rajaratnam
14 would like to be here today, including members of his own
15 family, but he is mindful of the media crush and does not want
16 them subjected to that spotlight. It is typical of his desire
17 to put the comfort of others ahead of his own.

18 So what is a fair and just sentence in this case?
19 Mr. Rajaratnam stands convicted of insider trading. The
20 sentence that the government seeks is comparable only to murder
21 and is greater than violent dangerous crimes such as
22 manslaughter, kidnapping and sexual abuse. The statute,
23 Section 3553, emphasizes the need to avoid unwarranted
24 disparities with defendants found guilty of similar conduct.
25 The sentence that the government seeks would create such

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

1ADHRAJ1

1 disparity, and there is no precedent for it. The government
2 can't cite one insider trading case with such a long sentence.
3 So instead the government has compared Mr. Rajaratnam to the
4 cases of Bernard Madoff and Bernard Ebbers and Jeffrey
5 Skilling, whose conduct caused incredible loss and suffering
6 for many, many people. That is not this case. That didn't
7 happen here.

8 The government seeks this sentence because of the way
9 they apply the sentencing guidelines. Please permit me to make
10 a personal observation. When I was a federal prosecutor with
11 the Justice Department -- it wasn't that long ago -- there were
12 no sentencing guidelines. In many courts around the country,
13 and particularly the Eastern District of Virginia where I spent
14 a fair amount of time, prosecutors did not take positions at
15 sentencing. It was considered uniquely within the purview of
16 the court. Now the sentencing guidelines have given
17 prosecutors a tool to push for greater and greater sentences by
18 taking aggressive positions on guideline enhancements, as we've
19 seen here, and by using the fraud loss table for a purpose for
20 which it was never intended, which is calculating gain in an
21 insider trading case.

22 But the vast majority of the gain that was realized
23 here did not go to Mr. Rajaratnam but went to Galleon's
24 investors. In fact, overall the insider trading stocks lost
25 more money than they gained. But a rigid application of the

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

1ADHRAJ1

1 fraud loss table does not recognize that, and instead that
2 rigid application results in a guideline range that overstates
3 the seriousness of the offense because it equates the offense
4 to conduct that is far more serious and egregious, like the
5 crimes I mentioned a moment ago.

6 The court should consider the amount that
7 Mr. Rajaratnam received. That is \$7.4 million, and that is
8 even theoretical and overstated because, as we went over last
9 week, in 2008 the market was down overall. Galleon did not
10 make any money. Mr. Rajaratnam did not receive anything for
11 those trades in 2008.

12 Now other courts have considered how much the
13 defendant received when sentencing defendants in securities
14 fraud cases. We cited Judge Rakoff's decision in United States
15 v. Oakford Corporation, where he imposed a downward departure
16 in part because each defendant realized only a small portion of
17 the overall gain.

18 The offense that Mr. Rajaratnam was convicted of was
19 insider trading. It was not putting the government to its
20 burden of proof at trial. He should not be punished more
21 because he chose to go to trial and make the government carry
22 that burden to prove its case. He should not receive a
23 sentence that is so much greater than those defendants who pled
24 guilty in some of the other cases that were mentioned in the
25 presentence report.

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

1ADHRAJ1

1 Defendants who plead guilty are only entitled to a
2 three-level guideline reduction. But as we know, when
3 defendants cooperate with the government, the gain amount under
4 the guidelines is negotiated and manipulated into lower ranges
5 before that is ever presented to the court and then a
6 three-level reduction is imposed there.

7 So there are many reasons, your Honor -- we have
8 detailed a lot of them in our briefs -- why the guidelines
9 should not determine the sentence here. Rather, a sentence
10 that takes into account all the factors in Section 3553 is
11 appropriate.

12 One of the most important factors at sentencing is
13 deterrence, specific and general. Specific deterrence has
14 already been accomplished here. Mr. Rajaratnam's career in
15 finance is over. He will never return to that field no matter
16 what happens today. General deterrence has already been
17 accomplished too. This case has already sent a message to Wall
18 Street that insider trading can mean the loss of your
19 livelihood, of your business, of your career, of everything
20 that you have built in your whole life, and that it can subject
21 you to intense media scrutiny and ridicule and exposure of your
22 most private matters.

23 No one here or anyone running a hedge fund would want
24 to trade places with Mr. Rajaratnam today regardless of what
25 sentence you impose. A lengthy sentence of imprisonment is not

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

1ADHRAJ1

1 necessary to accomplish deterrence.

2 Section 3553 also requires consideration of any
3 medical care that a defendant may need. The government seems
4 to suggest that the need for medical care should be considered
5 only if the defendant did not know of his medical problems when
6 the offense was committed. But that is not what the statute
7 says. The statute says that the need for medical care is a
8 factor to consider in imposing sentence.

9 As the court knows, your Honor, Mr. Rajaratnam suffers
10 from a progressive degenerative disease. He has required
11 several hospitalizations this year. Based on the information
12 that we have provided there are serious doubts as to whether
13 the Bureau of Prisons can provide the care that he needs. Any
14 lengthy term of imprisonment will surely shorten his life.
15 Based on the conduct for which he was convicted, he does not
16 deserve to die in prison.

17 We submit that a fair and just sentence in this case
18 is one that takes this into account, as well as takes into
19 account the other factors of Section 3553 that I have
20 mentioned -- the history and characteristics of the defendant,
21 that I have described and are in the PSR, the need to avoid
22 sentencing disparities with other insider trading cases, and a
23 sentence that is sufficient but not greater than necessary to
24 comply with these purposes.

25 Thank you, your Honor.

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

1ADHRAJ1

1 THE COURT: Thank you, Mr. Lynam.

2 I will now give the government the opportunity to
3 comment upon the recommendations made by the probation office.

4 Mr. Brodsky, are you going to do that?

5 MR. BRODSKY: Yes, your Honor. Your Honor, today you
6 sentence a man who is the modern face of illegal insider
7 trading. He is a man who, despite being born into privilege,
8 educated at the most prestigious universities in the world,
9 from the University of Sussex in England to Wharton Business
10 School in the United States, and a man who rose to the top of
11 the securities industry, despite having all those advantages
12 and privileges, repeatedly, consistently and knowingly violated
13 the securities laws of the United States by committing multiple
14 insider trading schemes. He did his criminal conduct in a
15 brazen, pervasive and egregious way.

16 The guidelines are high in his case. The government
17 seeks a high sentence in his case, not because it
18 distinguishes -- it just treats him differently than other
19 people because of who he is, but because of his conduct. He is
20 arguably the most egregious insider trader to face sentencing
21 in a federal courthouse in the United States, and that is
22 because of his conduct and the extent of his conduct and no one
23 else's. The government asks for a sentence commensurate with
24 his actions and his crimes.

25 I would like to briefly touch upon a few important

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

1ADHRAJ1

1 items that your Honor should consider in sentencing. We
2 submitted lengthy sentencing briefs so we won't go into all
3 those issues.

4 The first is I would like to talk a little bit about
5 the significance of general deterrence in insider trading
6 cases; second, why insider trading is illegal and harms
7 individuals, companies and investors; mention briefly recent
8 sentences for insider trading, directly address probation's
9 recommendation, and then summarize some of the reasons why the
10 government seeks a sentence within the range that the
11 government calculates of 235 months to 293 months.

12 Mr. Lynam says that there is a lot of media coverage
13 and asks your Honor not to sentence the defendant based on
14 media coverage. The government agrees. The sentence of the
15 defendant shouldn't be based on media coverage. It should be
16 based on the defendant's crimes and actions. We submit
17 respectfully, your Honor, the reason there is so much media
18 coverage of the defendant in this case is because of those
19 actions, because of his conduct, and because of his position.
20 It distinguishes him from all other insider trading defendants
21 arguably in history.

22 With respect to general deterrence, your Honor, Mr.
23 Lynam agrees this is one of the most widely watched sentencing
24 of an insider trading defendant. Your Honor's sentence, in our
25 view, will have an impact in the future on the behavior of

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

1ADHRAJ1

1 others. Surely defense counsel will be arguing in this
2 courthouse and in other courthouses throughout the country that
3 your Honor's sentence in this case sets the upper threshold of
4 a prison sentence for a defendant in insider trading because
5 many future defendants, their conduct, won't even rise to
6 nearly the level of Mr. Rajaratnam.

7 The U.S. markets are the largest equity markets in the
8 world. They are the most open, the most fair, the most
9 orderly. They ensure investors, from the average, ordinary
10 investor to the institutional investor, are equally protected.
11 Insider trading simply makes a mockery of the principle that no
12 one participant has an unfair advantage through thievery. And
13 insider trading, your Honor, is thievery. It is theft. It is
14 no different than somebody embezzling money from a bank or an
15 employee stealing information from a company. And yet insider
16 trading has become rampant, and Mr. Rajaratnam did it also and
17 repeatedly, over and over again and by smart, educated people.
18 So one must ask why.

19 Your Honor, we submit that the reasons why are the
20 reasons your Honor should consider in sentencing the defendant.
21 They apply to Mr. Rajaratnam. The incentives to commit this
22 crime are extraordinarily high, higher today than ever before,
23 and the difficulty in detecting it is extremely difficult. It
24 is very difficult to detect insider trading.

25 Money is the primary motive. It was no different for
SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

1ADHRAJ1

1 Mr. Rajaratnam. Hedge funds charge 2 percent management fees,
2 20 percent and up incentive fees, and by stealing material
3 non-public information they can make millions of dollars.
4 There is nothing wrong with making money, your Honor. It is
5 stealing inside information, to do it is illegal and very
6 wrong.

7 There is increasing pressure today for money managers
8 to beat the competition, and you heard that over the phone
9 calls recorded in Mr. Rajaratnam's own voice. Money flows to
10 those with the highest returns. Unfortunately, as it becomes
11 commonplace, as people trade on inside information, as
12 Mr. Rajaratnam and his friends did that, they begin to think to
13 themselves that they can justify it. They know they are
14 committing crimes, but it's OK because they need to beat the
15 competition, it's OK because they need to achieve the best,
16 it's OK because is it really so bad. That was Mr. Rajaratnam's
17 attitude, reflected in the phone calls.

18 As your Honor knows, the crime is particularly hard to
19 detect. Your Honor observed that there is a built-in defense
20 for people in Mr. Rajaratnam's position. It is very difficult
21 to detect insider trading committed by individuals like
22 Mr. Rajaratnam because when regulators are looking at all the
23 trading of a particular hedge fund, there is trading by a
24 number of portfolio managers and traders in the same stock,
25 back and forth, in different ways, in and out, and it is hard

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

1ADHRAJ1

1 to identify which trades go with the particular individual.
2 But more than that, you heard in Mr. Rajaratnam's own voice the
3 methods he used to mask his trading. He traded in and out of
4 stocks. You heard him say it and then you saw the evidence
5 that he actually did it, that before an acquisition that he
6 knew about, like ATI was going to be announced, he sold some of
7 the stock, knowing that later on down the road he can simply
8 claim to the regulators no one in their right mind would sell
9 stock knowing that the company is going to be acquired.

10 These are the methods that he used, and others, to
11 avoid detection. And for a while he was successful in doing
12 that. He knew, as he did during the trial and as he did
13 throughout in his instructions to subordinates, that he could
14 point to research, the massive research that he received and
15 the publicly available information, that he could create cover
16 stories and false e-mails and direct subordinates to do that.
17 The reason, your Honor, is that the crime of insider trading is
18 essentially committed through communication -- by telephone
19 often, in person, through other means over the internet -- and
20 in most cases the government won't have the resources or it
21 won't have a cooperating witness or other means to obtain a
22 wiretap over a particular individual's phone. That is why it
23 is very difficult to detect.

24 Given the strong incentives to commit the crime, the
25 difficulty to detect it, it is not surprising it's become all

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

1ADHRAJ1

1 too prevalent. This case against Mr. Rajaratnam reflects those
2 incentives. Mr. Rajaratnam's conduct reflects it, and it shows
3 how what the government -- the enormous resources the
4 government had to commit to obtain the evidence against
5 Mr. Rajaratnam.

6 Now, some like Mr. Rajaratnam seem to believe,
7 although they say insider trading is a serious crime, at the
8 same time speaking out of the same mouth they sort of say it's
9 really a victimless crime. Who is harmed by it? Underlying
10 all the submissions by the defense, underlying Mr. Rajaratnam's
11 statements to probation is sort of who's harmed by it. It is
12 completely wrong that it is a victimless crime.

13 In the wake of the insider trading scandals in the
14 1980s, with respect to Ivan Boesky and Michael Milken, Congress
15 conducted numerous hearings in the mid 19 to late 1980s and
16 they called a litany of experts from the financial industry to
17 the government, and those experts, based on that testimony,
18 Congress concluded insider trading was not a victimless crime
19 and Congress concluded that although it was difficult to
20 quantify, insider trading was responsible for the erosion of
21 investor confidence in our capital markets. In fact, four
22 former SEC chairmen submitted a letter to your Honor
23 yesterday -- William Donaldson, Roderick Hills, Harvey Pitt,
24 and David Ruder, all former SEC chairmen.

25 In that letter, your Honor, they say what Congress

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

1ADHRAJ1

1 found. They say that there are both specific and general
2 victims when the kind of illegal conduct of which the defendant
3 has been convicted occurs. They talk about the diminishing
4 confidence that the public will have in our markets because of
5 insider trading, that the harm is felt by public companies and
6 those who seek to utilize our capital markets to generate
7 capital for business growth and expansion, and they also say,
8 will make it more difficult for U.S. corporations to raise
9 capital, fund and expand operations, increase employment and
10 otherwise prosper.

11 Insider trading shakes investor confidence in the
12 fairness and integrity of the capital markets. There are
13 actual victims. In some cases, your Honor, they are
14 specifically identifiable. There is a case in this courthouse
15 against Joseph Stalin, who is a portfolio manager of another
16 hedge fund, where the trading occurred in block trades and
17 there are specific identifiable people on the other side of
18 those trades who lost millions of dollars. But in a lot of
19 cases, like this one, there are so many victims of little
20 amounts of money that they are not clearly identifiable because
21 of the liquidity of the stocks.

22 Well, there are still actual victims because for
23 Mr. Rajaratnam to have pocketed the 70 to 75 million dollars in
24 gains and losses avoided, for him to have done that -- it is a
25 zero sum game in the stock market -- others had to lose that

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

1ADHRAJ1

1 money. And let's not forget, your Honor, that Mr. Lynam and
2 the defense has never disputed, nor could they, that there are
3 actual real victims here in terms of the public companies.
4 Public companies and third parties like McKinsey suffered
5 greatly because their inside information, their secret
6 information, their confidential information was stolen.

7 McKinsey is a great example, your Honor, and we
8 submitted a quote from the McKinsey current chairman, who said
9 that their reputation has suffered greatly as a result of this
10 and that they will continue to suffer in the near future. That
11 is real harm from public companies and third parties whose
12 information was stolen by the defendant.

13 Now, underlying Mr. Rajaratnam's request also, and Mr.
14 Lynam seemed to say it, is that the guidelines, they are too
15 strong or the ranges are simply too long for white collar
16 crimes overall. Your Honor, what they forget -- and they
17 mention arguments that there are statistics of various crimes,
18 including violent ones where defendants receive lesser
19 sentences. Now those are all generalizations. Nobody knows
20 the facts of those cases. But these same arguments against the
21 guidelines for white collar crimes were made, exactly the same
22 arguments, in the Ebbers case and the Rigases cases.

23 Rigas argued that the 12 and 17 years that both of the
24 Rigases received were far below the sentences received by
25 terrorists. Ebbers argued the same thing for violent crimes,

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

1ADHRAJ1

1 before he received his 25-year sentence. But in the Rigas case
2 the Second Circuit explained, and the Ebbers case, they said:
3 "We concluded in Ebbers that in the circumstances presented
4 stiff guideline sentences for white collar crimes reflected
5 Congress' judgment as to the appropriate national policy for
6 such crimes." The same holds true here.

7 In particular with insider trading, insider trading
8 under the guidelines comes under 2B1.4, as your Honor knows,
9 not 2B1.1. 2B1.4 has one base offense level and then an
10 enhancement for the gain. That's it. There are no
11 enhancements for the numbers of companies whose information was
12 stolen, for the number of years in which a particular inside
13 trader committed his crime, for the number of different
14 associates they corrupted. There are all sorts of ways that
15 could be enhanced under 2B1.4 and it's not.

16 Now, Mr. Lynam and Mr. Rajaratnam and counsel for
17 Mr. Rajaratnam may not like Congress' judgment. They may think
18 Congress is being too harsh. But Congress over and over again
19 has heard about insider trading and they have heard about other
20 white collar crimes and it gets no sympathy from them,
21 appropriately so, and that is why the ranges are high. And
22 increasingly over time the sentences have become stronger,
23 which I will talk about in a moment.

24 It doesn't give Mr. Rajaratnam the license to steal
25 information, trade on it, and then come into court and claim

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

1ADHRAJ1

1 the penalties are simply too harsh, penalties that he certainly
2 knew about or should have known about given his position, his
3 experience, and given where he was in the industry and his
4 education.

5 Now the recent sentences in this courthouse for
6 insider trading only -- not Bernie Madoff, not Marc Dreier, not
7 some of the other cases. Let's talk about insider trading
8 cases. The judges in this courthouse, different judges, have
9 concluded that there were prior like sentences for insider
10 trading and that was not a sufficient deterrent. That's clear.
11 In the last few years the number of insider trading cases that
12 have been brought by the Southern District of New York alone
13 show how pervasive it is.

14 Judge Patterson a few years ago sentenced investor
15 banker Hafiz Naseem to ten years of imprisonment. Hafiz
16 Naseem's crimes do not come anywhere close to Mr. Rajaratnam's.
17 Judge Sullivan only a few weeks ago sentenced Zvi Goffer, who
18 worked for Mr. Rajaratnam at Galleon, to ten years of
19 imprisonment. Mr. Goffer's crimes -- serious, extensive -- do
20 not come close to Mr. Rajaratnam's crimes. Judge Sullivan also
21 sentenced 72 months to a hedge fund portfolio manager Joseph
22 Contorinis. Mr. Contorinis' conduct didn't even come close to
23 what Mr. Rajaratnam committed. Judge Batts --

24 THE COURT: Mr. Brodsky, I don't find those
25 comparisons particularly helpful because there are just as many

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

1ADHRAJ1

1 that go the other side. So the real issue here is what this
2 individual did as opposed to attempting to discern what numbers
3 were given in other cases, and that is what I am focused on.

4 MR. BRODSKY: Yes, your Honor. I agree with your
5 Honor that it is completely an individual-based decision.

6 I would submit, your Honor, that with respect to Zvi
7 Goffer it is a little closer than being just another sentence
8 simply because Zvi Goffer's crimes, as we submitted in our
9 submission, are connected to Mr. Rajaratnam, and Zvi Goffer
10 worked at Galleon. So I think because of that, because of that
11 relationship, which we submitted in our sentencing memorandum,
12 that is an important sentence that would be a guide for the
13 defendant.

14 Now probation recommended a sentence of 15 years here
15 after doing an investigation, looking at the trial record and
16 focusing solely on the defendant. Probation speculated as to
17 why Mr. Rajaratnam committed his crimes. They didn't have the
18 benefit of all the years of investigation that we had.

19 What we know -- and we know the reasons why
20 Mr. Rajaratnam committed his crimes, which we submit, your
21 Honor, should be relevant to your Honor's sentence.
22 Mr. Rajaratnam was committing this crime since the late 1990s.
23 Although the defense disputes the evidence with respect to
24 Roomy Khan, your Honor knows the video camera caught Ms. Khan
25 faxing confidential Intel information to Mr. Rajaratnam in the

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

1ADHRAJ1

1 late 1990s.

2 Now even putting that aside, the charges in this case
3 and the evidence proved at trial showed that Mr. Rajaratnam was
4 committing this crime since 2003, for years. For about six
5 years. That is extensive. Mr. Rajaratnam also thought he
6 wouldn't be caught, and I think that was evident from the tapes
7 and the methods that he used to evade detection.
8 Mr. Rajaratnam found, unfortunately, it was all too easy to
9 corrupt insiders, like Mr. Kumar and Mr. Goel.

10 Now, in 2008 it became necessary and part of
11 Rajaratnam's desperate attempt to ensure his hedge fund didn't
12 fail. It may seem surprising, your Honor, but your Honor knows
13 from the evidence that in 2008, after the collapse of Bear
14 Stearns and the later collapse of Lehman, investors were
15 pulling out funds out of Galleon just like every other hedge
16 fund, and redemptions were coming fast and furious. A former
17 executive at Galleon told us there were only two times when he
18 believed Galleon would collapse -- late 2008 and after
19 Mr. Rajaratnam's arrest.

20 Now, probation, your Honor -- I think it is
21 significant -- probation concluded that a sentence of 15 years
22 here was necessary because, to quote probation, the American
23 public has lost confidence in the financial market and in those
24 who have illegally profited or manipulated. The defendant's
25 conduct in this case has proven to many regular citizens that

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

1ADHRAJ1

1 they were right in their suspicions that the financial markets
2 are rigged, that insiders are playing with a stacked deck, and
3 that the average citizen is really a pawn in a much larger game
4 that operates by secret rules.

5 Probation looked at all the issues, including medical
6 care. What probation concluded was that the Bureau of Prisons
7 could handle Mr. Rajaratnam's medical conditions, and we
8 submitted, your Honor, evidence to that effect, an affidavit
9 from a BOP doctor to that effect. There are others who are in
10 the Bureau of Prisons who suffer from similar maladies as
11 Mr. Rajaratnam.

12 The government doesn't submit -- that is the
13 government's main argument as to why what the court should
14 consider is whether the Bureau of Prisons can adequately care
15 for the defendant's condition. We think we have proven that
16 they can.

17 Now it is important, and we put it in our submission,
18 that Mr. Rajaratnam has known about these conditions. It is
19 certainly a factor your Honor should consider. It is one other
20 courts have considered. He's known about his conditions since
21 2007 at least. He knew about some of his conditions earlier.
22 That is important because despite knowing about those
23 conditions he continued with his criminal conduct.

24 Now, your Honor, I will summarize some of the reasons
25 why we ask for this sentence.

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

1ADHRAJ1

1 There is no one who is Mr. Rajaratnam's equal in terms
2 of the breadth and scope of his insider trading crimes. At
3 least 19 public companies were victims. The duration of his
4 crimes and schemes is extraordinary. The number of corrupt
5 insiders and traders involved was extraordinary. There were at
6 least 20, and that is being conservative. Mr. Rajaratnam
7 corrupted or attempted to corrupt at least 16 insiders. There
8 were multiple interlocking conspiracies. There were hundreds,
9 if not thousands, of overt acts committed by Mr. Rajaratnam in
10 furtherance of his schemes. His gains, the gains as a result
11 of these crimes, were far more, far in excess than the other
12 insider trading cases sentenced by other judges in this
13 courthouse.

14 Your Honor, second, Mr. Rajaratnam took extensive
15 steps to evade detection. We have listed those before your
16 Honor. I don't think that it is necessary to repeat them.

17 Third, he was the head of one of the world's largest
18 hedge funds. He had great power and influence over the markets
19 given that position.

20 Fourth, through his own actions, through his
21 statements on recordings, he demonstrated the utter lack of
22 respect for the insider trading laws.

23 Now, there is in part some significance to the fact
24 that he hasn't accepted responsibility. It does have an effect
25 on the guidelines, and we submit it should have an effect on

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

1ADHRAJ1

1 your Honor's sentencing.

2 Mr. Lynam mentioned cooperating witnesses. With
3 respect to cooperating witnesses, when the government submits
4 5K letters to courts, as your Honor knows, we put in all the
5 facts, the good, the bad and the ugly, all gains as a result of
6 particular cooperating witness's involvement, and we leave the
7 sentence to the court. What is negotiated -- what Mr. Lynam
8 mentioned that there is negotiation over the gain, that is
9 factually incorrect with respect to cooperators. What is
10 negotiated, your Honor, are forfeiture, and that is negotiated
11 in this case as well. We have negotiated forfeiture with the
12 defense. So it is no different.

13 In short, your Honor, the government asks this court
14 to sentence Mr. Rajaratnam based on his conduct to the longest
15 term of imprisonment for an insider trading defendant because
16 he doesn't compare to others, a sentence that punishes him for
17 his extensive crimes, reflects the seriousness and brazenness
18 of those crimes, and sends a clear and unmistakable message to
19 money managers and hedge funds that insider trading must stop
20 and if you get caught, no matter how powerful, no matter how
21 rich, no matter what your position is in the securities
22 industry, you will be punished accordingly.

23 All defendants, your Honor, are complex human beings.
24 All defendants have a variety of motives, and there is no one
25 human being who is all bad or who is all good. That's no

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

1ADHRAJ1

1 different than when your Honor sentences any other defendant in
2 this courthouse, be it a drug trafficker or a violent criminal
3 or somebody who participated in a robbery. Each of those
4 individuals also has loved ones, each of those individuals -- I
5 would respectfully submit most of them -- not all of them,
6 unfortunately, but most of them -- have done good acts, have
7 done good things in life. Maybe they don't have the resources,
8 maybe they don't have the ability to provide the court with
9 hundreds of letters or articulate what they have done that is
10 good in life, but all human beings are like that.

11 We ask your Honor to sentence this defendant based on
12 the conduct, the criminal conduct that he committed.

13 Thank you, your Honor.

14 THE COURT: Thank you, Mr. Brodsky.

15 Mr. Rajaratnam, you are not required to say anything
16 today. Mr. Lynam has spoken on your behalf. But you have the
17 opportunity to say something if you would like to.

18 THE DEFENDANT: No thank you, your Honor.

19 THE COURT: I adopt the factual recitations of the
20 presentence report.

21 With respect to the calculation of the sentencing
22 guideline range, because the defendant has no prior offenses,
23 he is properly placed in Criminal History Category number I.

24 His total offense level for his insider trading crimes
25 is 38, calculated as follows: The base offense level for the

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

1ADHRAJ1

1 insider trading offense is 8. This is increased by 24 levels
2 because a reasonable estimate of the total gains resulting from
3 the offenses are greater than \$50 million but less than \$100
4 million. In making this calculation, I have included estimated
5 actual gains based on the increase in the price of the
6 company's shares from the date of the defendant's purchases to
7 a time shortly after the public learned of the inside
8 information.

9 My gain calculation also includes estimated losses
10 avoided in the Intel and Google shares based on a decrease in
11 price of the shares from the date the defendant sold the shares
12 to the time shortly after the public learned of the inside
13 information. The losses avoided on the Goldman Sachs stock
14 were calculated based on the date that certain analysts made
15 public estimates of Goldman's fourth quarter loss for 2008.

16 The gain amount also includes both the defendant's
17 personal gains from insider trading as well as the much larger
18 gains realized by Galleon investors, who of course did not
19 participate in the criminal activity but benefited thereby.
20 That brings the gain to an amount well over \$50 million.

21 I have excluded any gains or losses avoided that
22 relate to the Galleon Crossover Fund because I conclude there
23 is insufficient evidence to find that all of these trades
24 originate with the defendant. In any event, I note that their
25 inclusion would have no impact whatsoever on the offense level

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

1ADHRAJ1

1 calculation.

2 I also find that there is an additional four-level
3 enhancement in the offense level because the defendant played a
4 leadership role in his crimes. Specifically, the government
5 has established that the defendant was the organizer and leader
6 of the conspiracy charged in Count One of the indictment and
7 that there were at least five knowing participants in the
8 conspiracy alleged.

9 Finally, I conclude that a two-level enhancement is
10 appropriate under the guidelines for obstruction of justice.
11 Specifically I find that the defendant acted with the specified
12 intent to obstruct the SEC's investigation when at his
13 deposition he was asked whether he had any reason to believe
14 that AMD was going to be acquired by ATI before the public
15 announcement of the acquisition. His answer that he did not
16 was clearly false, as the evidence in the case has shown, and
17 obviously pertained to an issue material to the SEC's
18 proceeding and the crimes for which he has been convicted in
19 this case.

20 This brings the defendant's total offense level to 38.

21 At offense level 38 and Criminal History Category I,
22 the Probation Department has correctly calculated the
23 sentencing guideline range as 235 to 293 months in prison.

24 Mr. Lynam, is there anything further that you would
25 like to say before the court pronounces sentence?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

1ADHRAJ1

1 MR. LYNAM: No, your Honor.

2 THE COURT: Mr. Brodsky, is there anything further the
3 government would like to say?

4 MR. BRODSKY: No, your Honor.

5 THE COURT: Mr. Rajaratnam, would you please stand and
6 I will state the sentence and then allow the parties to make
7 any legal objections.

8 It is the judgment of this court the defendant, Raj
9 Rajaratnam, is hereby committed to the custody of the United
10 States Bureau of Prisons to be imprisoned for a term of 132
11 months.

12 Upon release from imprisonment, the defendant shall be
13 placed on supervised release for a term of two years, with the
14 conditions recommended by the Probation Department; namely, the
15 following mandatory conditions: The defendant shall not commit
16 another federal, state or local crime; the defendant shall not
17 possess a controlled substance; the defendant shall not possess
18 a firearm, dangerous weapon or destructive device.

19 The mandatory drug testing is suspended because the
20 court finds there is a low risk of future drug abuse.

21 The defendant shall cooperate in the collection of DNA
22 as directed by the probation officer.

23 In addition, defendant shall comply with standard
24 conditions 1 through 13, which will be explained,
25 Mr. Rajaratnam, at the time of your release.

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

1ADHRAJ1

1 In addition, the following special conditions shall
2 apply: The defendant shall provide the probation officer with
3 access to any requested financial information.

4 Within 72 hours of release from custody of the Bureau
5 of Prisons, the defendant shall report in person to the
6 probation office in the district of his residence.

7 I am imposing a fine in the amount of \$10 million, as
8 recommended by the probation office.

9 I have not imposed restitution because there are no
10 individual identifiable victims under the statute.

11 Have the parties agreed to the form of a forfeiture
12 order?

13 MR. LYNAM: Yes, your Honor.

14 MR. BRODSKY: Yes.

15 MR. LYNAM: We have signed one, your Honor, and I
16 believe Mr. Brodsky has it.

17 MR. BRODSKY: Yes, your Honor. The forfeiture order
18 is in the amount of \$53,816,434.

19 THE COURT: I will enter that order.

20 It is further ordered that the defendant shall pay to
21 the United States a special assessment of \$1400, which shall be
22 due immediately.

23 You may sit down.

24 In imposing this sentence I have taken into account
25 all of the factors that are set forth in the sentencing

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

1ADHRAJ1

1 statute, including the nature of the crimes, the need for just
2 punishment, the need for deterrence, the risk of sentencing
3 disparities, the guideline calculation, and finally the
4 defendant's individual circumstances. In considering those
5 factors, the court is directed to impose a sentence sufficient
6 but not greater than necessary to achieve all the statutory
7 goals.

8 Considering the nature of the defendant's crimes, the
9 government is absolutely correct that insider trading is an
10 assault on the free markets that are a fundamental element of
11 our democratic society. There may not be readily identifiable
12 victims, but when the playing field is not level, the integrity
13 of the marketplace is called into question and the public
14 suffers. That is not to say that the defendant's insider
15 trading is the cause of the economic dislocations that our
16 society now faces. That would be too easy an answer. But his
17 crimes and the scope of his crimes reflect a virus in our
18 business culture that needs to be eradicated. Simple justice
19 requires a lengthy sentence.

20 In addition to simple justice, general deterrence is
21 an important factor in any sentence. There is no crystal ball
22 to tell us what length of sentence will deter other fund
23 managers, traders and brokers from engaging in insider trading,
24 but certainly eleven years is the high end of the sentencing
25 range for similar crimes and the court's view is highly likely

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

1ADHRAJ1

1 to act as a strong and necessary deterrent.

2 In reaching that conclusion a court has to consider
3 meaningful distinctions between different types of criminal
4 behavior and avoid unjustified wide disparities with similarly
5 situated defendants convicted of similar crimes. The
6 sentencing guidelines can be helpful in drawing these
7 distinctions, but particularly in financial crimes can point to
8 widely disparate sentences that very similar offenses reflect
9 depending on the vagaries of stock price movements and other
10 factors that can ratchet up or down the guideline gain
11 calculation.

12 It is preferable then to place more focus on the
13 nature of the crime, the evil of insider trading and its impact
14 on the markets. The defendant downplays the seriousness of the
15 offenses while the government declines to draw any
16 distinctions. Perhaps it is sufficient to observe that insider
17 trading is insidious but poses a different danger in Enron-type
18 frauds and Madoff-like Ponzi schemes. Some distinction,
19 therefore, is reasonable.

20 With respect to the risk of unfair disparity vis-a-vis
21 other insider trading defendants, while this sentence is, as
22 noted, at the high end of the range, it properly reflects the
23 breadth of the defendant's crimes. It also takes into account
24 personal circumstances, that I will now address.

25 It is tempting in high-profile cases such as this one

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

1ADHRAJ1

1 to ignore factors that one might argue in favor of a moderated
2 sentence. The clear message is important and anything less is
3 less than satisfying. But the court has an obligation to
4 consider individual circumstances, and here there are two
5 factors that help to determine a fair sentence.

6 First, I concur with the Probation Department that the
7 defendant's good works figure in the equation here. It is true
8 that many wealthy people are in the position to make the usual
9 charitable contributions, but defendant's responsiveness to and
10 care for the less privileged goes considerably beyond the norm
11 and can be seen in the scores of letters I received detailing
12 his efforts to help tsunami victims in that Sri Lanka,
13 earthquake victims in Pakistan, a homeless shelter here in New
14 York, and 9/11 victims as well.

15 Second, I consider the defendant's medical condition a
16 factor that the Probation Department declined to consider. As
17 detailed in certain of the sentencing submissions to the court,
18 that I will unseal today, his advanced diabetes leading to
19 imminent kidney failure, the need for transplant surgery, and a
20 host of related problems. Will the Bureau of Prisons be able
21 to provide not the level of care he is now receiving but the
22 basic level of care necessary to address those complex set of
23 illnesses. Perhaps, but it is far from a given and my
24 experience leads me to be less optimistic than others.

25 I am more certain of the fact that prison provides a

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

1ADHRAJ1

1 more intense form of punishment for critically ill prisoners.
2 Illness does not provide a get-out-of-jail-free card, but some
3 form of forbearance, however constrained by circumstances, is
4 fundamental to our system of justice and is appropriate here.

5 Do either counsel know of any legal reason why the
6 sentence should not be imposed as stated?

7 MR. BRODSKY: No, your Honor.

8 MR. LYNAM: No, your Honor.

9 THE COURT: I hereby order the sentence to be imposed
10 as so stated. A complete copy of the presentence report shall
11 be provided to the Bureau of Prisons and the Sentencing
12 Commission.

13 Mr. Rajaratnam, you have the right to appeal this
14 sentence. If you are unable to pay the costs of the appeal,
15 you have the right to apply for leave to appeal as a poor
16 person. If you request, the clerk of the court will prepare
17 and file a notice of appeal on your behalf immediately.

18 Do you understand this?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: My understanding from the government's
21 submission is that they do not oppose voluntary surrender.

22 MR. BRODSKY: That is correct, your Honor.

23 THE COURT: I am going to order that the defendant
24 shall surrender for service of his sentence at an institution
25 designated by the Bureau of Prisons on or before November 28th

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

1ADHRAJ1

1 of this year.

2 MR. GUHA: Your Honor, may we be heard on behalf of
3 Mr. Rajaratnam regarding the issue of bail pending appeal?

4 THE COURT: Yes, you may. Let me first ask the
5 parties whether there are any other issues with respect to the
6 sentencing issue to be addressed?

7 MR. BRODSKY: No, your Honor. I do think the
8 government would move to dismiss the underlying counts in the
9 original indictment, superseder 1. He was convicted in
10 superseder 2. Other than that, I think the bail pending appeal
11 is the remaining issue.

12 THE COURT: All right.

13 MR. GUHA: Thank you, your Honor. Good morning. Your
14 Honor, with regard to the issue of bail pending appeal, the law
15 is very clear, and I don't think it is being disputed by the
16 government, and that law requires under these circumstances and
17 on this record that Mr. Rajaratnam shall be granted bail
18 pending appeal.

19 The test is very simple. There must be -- your Honor
20 must find by clear and convincing evidence, first, that
21 Mr. Rajaratnam does not pose a risk of flight or danger to the
22 community. On this record, your Honor, we respectfully submit
23 your Honor can make those findings by clear and convincing
24 evidence.

25 With respect to the issue of dangerousness to the

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

1ADHRAJ1

1 community, there has never been any allegation, nor can there
2 be, that Mr. Rajaratnam ever has posed or ever will pose a
3 danger to the community.

4 With respect to the issue of flight, a few points,
5 your Honor. First of all, this court, both your Honor and two
6 different magistrate judges, have found on four separate
7 occasions that Mr. Rajaratnam is not a flight risk. Certainly
8 not one that can't be addressed by bail conditions short of
9 remand. I think your Honor's observation after the verdict
10 when the government moved for remand was telling and correct.
11 Your Honor said: "I believe that based on the defendant's
12 track record to date that he is not a risk, a significant risk
13 of flight, and I'm not sure there is anything more that the
14 defendant could do to establish that other than what he has
15 done."

16 Your Honor's finding at that time has been only
17 supported and buttressed by the findings of the Probation
18 Department. The Probation Department in their PSR, issued on
19 September 20th, just roughly under a month ago, also found that
20 Mr. Rajaratnam is not a risk of flight, and the probation
21 office's finding on this point I think should be given heavy
22 weight. The probation office made this finding independently,
23 after interviewing Mr. Rajaratnam as part of the process,
24 meeting with his family, exploring in detail his extensive ties
25 to this community.

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

1ADHRAJ1

1 Your Honor, what shouldn't be lost in this is
2 Mr. Rajaratnam has been a resident of this country and in the
3 New York area in particular for over 30 years. He lives with
4 his family, including his elderly parents, and really has been
5 an integral part of this community.

6 The Probation Department also assessed his medical
7 situation and observed the need for Mr. Rajaratnam to meet
8 regularly with his team of physicians to address the health
9 issues, that your Honor is aware of. They also are aware
10 obviously of whatever ties he may have had abroad, and the
11 Probation Department came to the conclusion that he is not a
12 risk of flight.

13 Perhaps the best evidence, your Honor, that
14 Mr. Rajaratnam is not and has not ever posed a risk of flight
15 is the fact that Mr. Rajaratnam sits here today. From the date
16 of his arrest, which is just under two years ago, there have
17 been broad pronouncements both by the government and through
18 the media of lengthy sentences. In fact, much lengthier than
19 your Honor just imposed. Throughout that one constant has been
20 there -- Mr. Rajaratnam has abided by every term of his bail
21 and has appeared before this court whenever asked to do so, and
22 he will continue to do so. Candidly, on this record, there is
23 nothing to suggest to the contrary.

24 We believe your Honor can make a finding of clear and
25 convincing evidence that Mr. Rajaratnam does not impose a risk

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

1ADHRAJ1

1 of flight and he does not impose a dangerousness to the
2 community -- he is not a danger to the community.

3 The second prong is a determination as to whether the
4 appeal in this case presents a substantial issue of law or
5 fact. As your Honor is certainly aware, Mr. Rajaratnam intends
6 to appeal your Honor's finding on the motion to suppress the
7 wiretaps. A substantial issue under the Second Circuit law --
8 and again, I don't think this is in dispute -- defines a
9 substantial issue as one that raises a close question or one
10 that very well could be decided the other way. That is the
11 United States v. Randall, 761 F.2d 122, 125. That is a widely
12 viewed, seminal case on this issue.

13 All we are asking your Honor to do in terms of
14 granting Mr. Rajaratnam bail pending appeal is to confirm what
15 your Honor already found in your opinion. Namely, that the
16 issues raised in the wiretap, and specifically the issue of
17 necessity, presents a close question, one that could be decided
18 the other way. Your Honor found that in his order and your
19 Honor also identified in your order several other legal issues
20 of which there are mixed opinions.

21 Now, one thing to be clear. Finding that there is a
22 substantial issue does not require your Honor to find that
23 there was an error in the order that you issued with respect to
24 the wiretaps. All it requires is that there is a close
25 question that may be decided the other way. As one example,

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

1ADHRAJ1

1 Judge Jones in the Bernie Ebbers case granted Mr. Ebbers bail
2 pending appeal despite both the length of his sentence and her
3 written opinion that she believed her ruling on the conscious
4 avoidance of guilt instruction was correct. But Judge Jones in
5 the Ebbers sentencing recognized that there was a close issue
6 that may be decided the other way and that therefore following
7 the law allowed Mr. Ebbers to remain out on bail pending his
8 appeal, as should be the case with Mr. Rajaratnam.

9 The lead issue on appeal, your Honor, is fairly
10 straightforward. The Fourth Amendment constitution in Title
11 III require that prior judicial approval of a wiretap be based
12 on a full and complete statement of necessity in the wiretap
13 affidavit the government submits ex parte to an authorizing
14 judge.

15 Now, your Honor found that the affidavit submitted by
16 the government in order to gain this wiretap contained "a
17 nearly complete omission by the government of critical facts
18 necessary for Judge Lynch's deliberation." Now your Honor
19 proceeded to find that it was immaterial because of
20 supplemental information provided by the government at the
21 Franks hearing, and while we respectfully disagree with your
22 Honor's conclusion, we do note that that is a close question,
23 and it is almost indisputably a close question. I say
24 indisputably because the Seventh Circuit has addressed that
25 very issue as to whether post hoc supplemental information can

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

1ADHRAJ1

1 be used to prop up an otherwise deficient affidavit in the
2 context of a Franks hearing. That case is the United States v.
3 Harris. It is 464 F.3d 733, 739.

4 This issue is a close issue, your Honor. The Second
5 Circuit has not had an opportunity to rule on it and it will
6 when this issue is presented to it on appeal. If it follows
7 the guidance of the Seventh Circuit, it may well reverse your
8 Honor's order in terms of the conclusion and we may well be
9 back before your Honor on remand. That is all that the statute
10 requires your Honor to find in order to grant Mr. Rajaratnam
11 bail pending appeal.

12 There are two other issues, your Honor, that we intend
13 to raise that we also suspect will independently present a
14 substantial issue that warrants Mr. Rajaratnam's bail pending
15 appeal. One, the impact of the government's misstatements and
16 omissions regarding probable cause and, second, the broader
17 question as to whether Title III permits wiretaps for insider
18 trading cases. On its face Title III does not do so, and we
19 are mindful of your Honor's findings but we respectfully submit
20 that this is an issue that the Second Circuit needs to address
21 and will have the opportunity to address once our appeal is
22 under way.

23 In the government's submissions on this matter, the
24 government has said very little on the substantial nature of
25 the issues presented on the wiretap. Your Honor, I understand

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

1ADHRAJ1

1 why. While we respectfully disagree with your Honor's
2 conclusion on the wiretap, we fully intend at appeal to embrace
3 many of the factual findings your Honor properly made in
4 connection with the wiretap application. Your Honor found in
5 his order that the government "failed to disclose the heart and
6 soul of its investigation, without which a reasoned evaluation
7 of the necessity of employing wiretaps was impossible." Your
8 Honor found that was a glaring omission and found that you were
9 "at a loss to understand how the government could have ever
10 believed that Judge Lynch could determine whether a wiretap was
11 necessary to this investigation without knowing the most
12 important part of that investigation." The first quote was
13 from page 43 of your order the second is from page 36.

14 Your Honor found that the government's representation
15 was nearly a full and complete omission of what investigative
16 procedures had in fact been tried and deprived Judge Lynch the
17 opportunity to assess the necessity of a wiretap. That is page
18 40.

19 Your Honor found that the government recklessly
20 withheld from Judge Lynch "precisely the nuts and bolts of an
21 investigation that must be presented to a court if it is to
22 fulfill the function of determining whether conventional
23 investigative techniques are likely to prove inadequate."

24 I understand why the government doesn't want to
25 address those findings and pretend they didn't happen. I

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

1ADHRAJ1

1 wouldn't want to and I wouldn't want to have to defend it in
2 front of the Second Circuit, but they are going to have to do
3 so when this appeal is taken, and the Second Circuit may well
4 rule in a different direction.

5 The third prong of the test for bail pending appeal
6 asks if the appeal is decided in the defendant's favor will a
7 new trial be required. I note again the government has made no
8 submission contesting that in fact if the wiretaps are -- if
9 the appeal is granted and the wiretaps are suppressed there
10 will be the need for a new trial, and frankly I don't think
11 they have a choice given the openings and closings in this case
12 before the jury.

13 During both the openings and closings the government
14 repeatedly referred to the wiretaps as the centerpiece of their
15 case, which is clearly a factor in the jury's verdict on all
16 counts. The government said "the tapes were devastating
17 evidence of the defendant's crime in realtime and, as you have
18 seen, they alone are powerful evidence that the defendant is
19 guilty of all the crimes." The trial in the closing at page
20 5160.

21 They said again, these recordings alone lead to the
22 unshakeable conclusion that he is guilty as charged of engaging
23 in an illegal scheme with Kumar. They said again, "Once again,
24 the best evidence of the scheme, the most powerful evidence of
25 the scheme, are once again the wiretaps." They described it as

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

1ADHRAJ1

1 the best, the most powerful, and the core evidence of the
2 government's case.

3 On that record, the government cannot credibly stand
4 up and suggest that if the wiretaps are suppressed there won't
5 likely be an order for a new trial, and that is what the court
6 must find and if so, Mr. Rajaratnam's entitled to bail pending
7 appeal.

8 Just in summation, your Honor, one point very briefly.
9 I want to repeat Mr. Lynam's comments, to thank you, the court
10 and the courtroom staff for all the consideration it's shown to
11 Mr. Rajaratnam throughout this ordeal. Your Honor, this is no
12 doubt a somber day for Mr. Rajaratnam, as it is for all of us
13 who have grown to know him and care about him, but
14 Mr. Rajaratnam has faced this day, has faced many somber days
15 from the date of his arrest almost two years ago and many dire
16 predictions about what would happen, and the one constant, as I
17 mentioned before, is that Mr. Rajaratnam has followed all of
18 his obligations to probation, this court and the government
19 since that day with dignity and discipline. He has followed
20 his bail conditions to the letter of the law and he
21 unquestionably will continue to do so if, as the law requires
22 under the circumstances, bail is granted while his appeal is
23 pending.

24 Thank you, your Honor.
25 (Continued on next page)

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

ladnraj2 Sentence

1 THE COURT: Thank you.

2 MR. BRODSKY: Your Honor, the standard here, and I
3 think it's undisputed, is that Mr. Rajaratnam bears the burden
4 of demonstrating by clear and convincing evidence that he is
5 not likely to flee. He bears the burden of demonstrating that
6 his appeal raises a substantial question of law or fact, and he
7 bears the burden that that substantial question, if one exists,
8 will likely result in a reversal or an order for a new trial.

9 Your Honor, unfortunately for Mr. Rajaratnam, he can't
10 demonstrate by clear and convincing evidence that he is not
11 likely to flee. The reason for that, your Honor, is today is a
12 serious changed circumstance for Mr. Rajaratnam, and I don't
13 think anybody can reasonably dispute that.

14 Unlike any day prior to today, Mr. Rajaratnam had
15 hoped that his sentence would be low, he had hoped based on his
16 arguments with respect to his medical conditions and his other
17 arguments. Today that changed completely. He learned that the
18 Court sentenced him to 11 years, which by anybody's analysis or
19 review is a very serious sentence. He knows, in light of what
20 he believes are his medical conditions, what future he faces.
21 And I believe for that reason alone, your Honor, compliance
22 with bail conditions prior to today doesn't provide good
23 meaning with respect to the statute. The statute has a
24 presumption that he should should surrender and there should
25 not be bail pending appeal. He, like other defendants, like

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

ladnraj2 Sentence

1 through the Franks hearing and made the determination. We did
2 not try and didn't need to rehash all of that in our reply
3 memo. What we did emphasize in our reply memo I think is
4 significant, which is the standard of review on appeal for
5 Mr. Rajaratnam is a very difficult one.

6 It's one where the Second Circuit grants considerable
7 deference to the district court, issuing judge on the wiretap.
8 It's one where the issuing judge, so long as there are enough
9 facts that are minimally adequate to physically support the
10 determination, the wiretap will be upheld. And it's one where
11 the Second Circuit has applied Franks. I know the defense has
12 this belief, two-pronged belief; one that Franks doesn't apply
13 and one that they hope one day to convince a Court that insider
14 trading can't be a means to obtain a wiretap, the insider
15 trading conduct.

16 Your Honor, courts that have looked at this, including
17 Judge Sullivan and your Honor, completely rejected the notion
18 that the wiretap statute does not allow investigations and the
19 use of a wiretap for investigating insider trading. The
20 Supreme Court in Carpenter v. United States said wire fraud
21 includes insider trading conduct. Congress has repeatedly said
22 wire fraud includes insider trading conduct.

23 So, while they have hope for that, that hope has no
24 reasonable basis on appeal.

25 With respect to Franks, we cited a number of cases in
SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

ladnraj2 Sentence

1 which, with respect to search warrants and with respect to, in
2 the Bianco case the necessity section of a wiretap application,
3 the Second Circuit applied Franks, and they applied the
4 analysis different from the Seventh Circuit, and this is the
5 Second Circuit to whom they are appealing.

6 Your Honor, they do not have an appeal that raises a
7 substantial question of law and fact in light of that. And we
8 submit, your Honor, respectfully, that he should be denied bail
9 pending appeal and that his surrender data, based on our
10 communications with the Bureau of Prisons, should be in
11 approximately 21 days. Thank you, your Honor.

12 MR. GUHA: Your Honor, if I may, just one point of
13 clarification.

14 THE COURT: Yes.

15 MR. GUHA: I believe Mr. Brodsky is incorrect on one
16 point of law. At appeal the legal issue as to whether post hoc
17 supplemental information can be used to support an otherwise
18 infirm affidavit will be determined de novo. There is no
19 deference given; it is a pure legal issue, your Honor. I think
20 that is one of the many factors that make it such a close
21 question, your Honor, and one that candidly may be decided the
22 other way, and that's all that the law requires. And making
23 that determination the law requires that Mr. Rajaratnam shall
24 be permitted bail pending appeal.

25 THE COURT: Thank you.

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

ladnraj2

Sentence

1 With respect to the surrender date, I have been
2 providing defendants as a matter of standard practice with a
3 45-day surrender date, and even in those situations I have had
4 situations where I have had to extend it because the Bureau of
5 Prisons has not been able to categorize the defendant. So
6 Mr. Rajaratnam will be treated like any other defendant in the
7 courtroom, and the surrender date remains unchanged.

8 I deny the defendant's motion for bail pending appeal.
9 I conclude that he has established by clear and convincing
10 evidence that he is unlikely to flee by his conduct to date,
11 including his conduct since his conviction in this case, as
12 well as by the new information regarding his medical needs.
13 But I don't believe that an appeal raises a substantial
14 question of law likely to result in reversal or a new trial.

15 Though I was obviously less than happy with the
16 government's failure to present Judge Lynch with information
17 relevant to his evaluation of whether the use of a wiretap was
18 necessary, it seems clear that suppression is not the remedy,
19 given the factual and the legal findings that I made on the
20 record at the conclusion of the Franks hearing and in the
21 Court's opinion. Therefore, the motion for bail pending appeal
22 is denied.

23 Is there anything further to address?

24 MR. GUHA: Yes, your Honor. We would respectfully ask
25 that your Honor stay your ruling on bail pending appeal so we

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

ladnraj2 Sentence

1 may seek an appeal an that issue, your Honor.

2 THE COURT: I don't think you need a stay at this
3 juncture.

4 MR. LYNAM: Your Honor, there is one other issue then.
5 In light of your ruling on bail, we would ask the Court to make
6 a recommendation of a designation to the Bureau of Prisons, and
7 we would ask that that be the federal medical center in Butner,
8 North Carolina.

9 THE COURT: I will make that recommendation.

10 MR. LYNAM: Thank you, your Honor.

11 THE COURT: Anything further?

12 MR. BRODSKY: Yes, your Honor.

13 We move to dismiss the underlying counts including the
14 first superseding indictment.

15 THE COURT: That motion is granted.

16 If there is nothing further, we will adjourn.

17 (Adjourned)
18
19
20
21
22
23
24
25

GX 26

GX 26

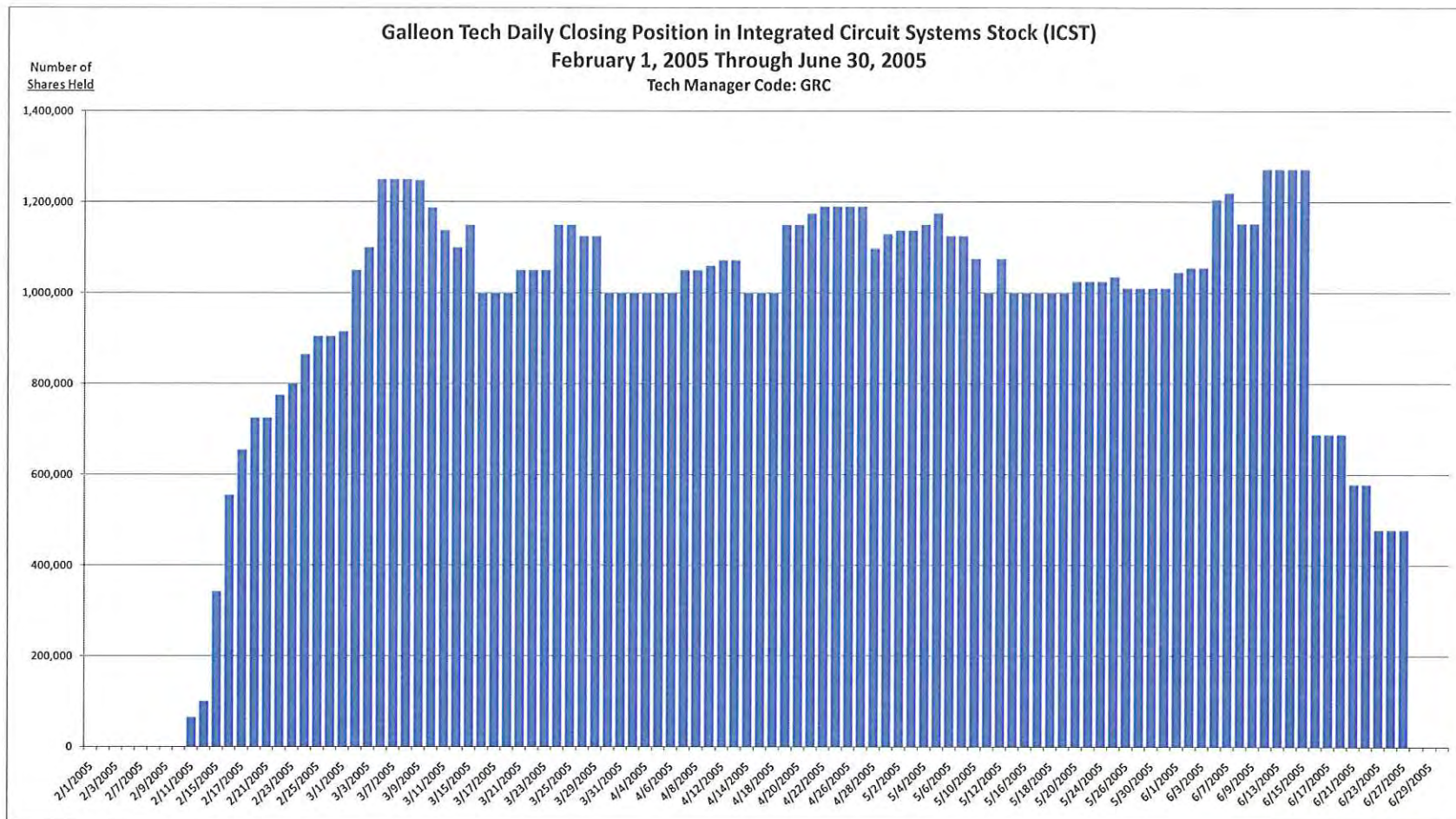
**GOVERNMENT
EXHIBIT
26**S209 Cr. 1184 (RJH)**Certain Communications In February 2005**

Date	Time*	From	To	Duration	GX
2/10/05	6:29 pm	Smith	Ahmed	9 minutes	282
2/17/05	4:10 pm	Ahmed	Smith	3 minutes	282
2/17/05	8:51 pm	Smith	Ahmed	2 minutes	282

* Eastern Standard Time.

GX 27

GX 27



**GOVERNMENT
EXHIBIT
27**

"S2 09 Cf. 1184 (RJH)"

GX 28

**Galleon Tech Profit on Stock in Integrated Circuit Systems (ICST)
Held at Time of its Acquisition by Integrated Device Technology (IDTI)**

Fund (Manager)	Realized Profit	GX
Galleon Tech (GRC)	\$ 2,678,211	150, 161, 162

**GOVERNMENT
EXHIBIT
28**

S209 Cr. 1184 (RJH)

GX 39

Certain Communications On July 24, 2008

Time*	From	To	Duration / Content	GX
2:27 pm	Chiesi	Taylor	2 minutes	219, 220
2:29 pm	Chiesi	Taylor	13 minutes	219, 220
8:41 pm	Rajaratnam	Chiesi	9 minutes	200
8:52 pm	Taylor	Chiesi	15 minutes	219, 221
9:07 pm	Chiesi	Kurland	6 minutes	263-A
9:14 pm	Chiesi	Rajaratnam	<p>"Akamai....</p> <p>They're gonna guide down...</p> <p>I just got a call from my guy...</p> <p>They think internally the stock goes to 25...."</p>	200, 532

* Eastern Standard Time.

**GOVERNMENT
EXHIBIT
39**

S209 Cr. 1184 (RJR)

GX 42

GX 42

**GOVERNMENT
EXHIBIT
42**

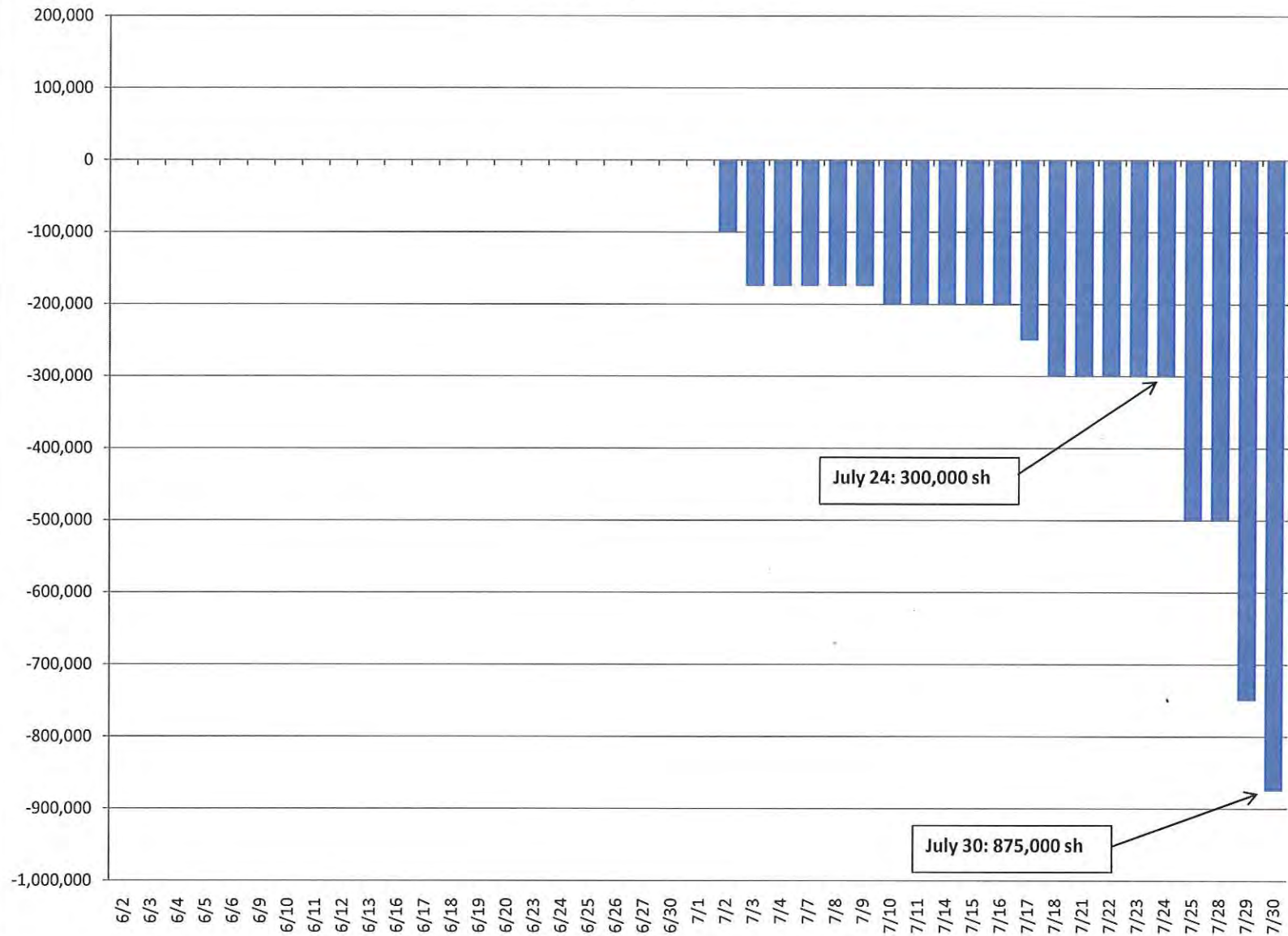
S2 09 Cr. 1184 (RJH)

Galleon Tech Daily Closing Position in Akamai Stock (AKAM)

June 1, 2008 Through July 30, 2008

Tech Manager Code: TAM

Number of
Shares Held



GX 44

**Galleon Tech Profit From Trades in
Akamai Securities Beginning on July 25, 2008**

**GOVERNMENT
EXHIBIT
44**

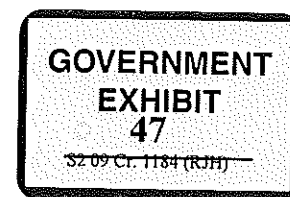
SZ 09 CT 1184 (RJB)

Fund (Manager)	Realized Profit	GX
Galleon Tech (TAM)	\$ 5,139,851	150

GX 47

Telephone Communications Between Roomy Khan and Deep Shah
January 2007 – July 2007

NUMBER OF PHONE CALLS:	119
-------------------------------	------------



GX 48

**GOVERNMENT
EXHIBIT
48**

SZ 09 Cr. 1184 (RJH)

Certain Communications On July 2, 2007

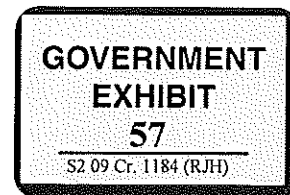
Time*	From	To	Duration	GX
2:20 pm	Hilton	Holloway	7 minutes	246
3:06 pm	Shah	Khan	1 minutes	233
3:10 pm	Shah	Khan	2 minutes	233
3:14 pm	Shah	Khan	1 minutes	233
3:53 pm	Khan	Rajaratnam	1 minutes	1400-A
3:59 pm	Khan	Rajaratnam	25 seconds	1400-A
4:02 pm	Khan	Rajaratnam	3 minutes	1400-A

* Eastern Standard Time

GX 57

Telephone Communications Between Roomy Khan and Shammara Hussain
January 2007 – July 2007

NUMBER OF PHONE CALLS:	150
------------------------	-----



GX 58

Certain Communications From July 5, 2007 Through July 19, 2007

Date	Time*	From	To	Duration/ Content	GX
7/5/07	10:14 pm	Hussain	Khan	10 min	248
7/6/07	3:40 pm	Khan	Hussain	3 min	248, 249
7/7/07	11:47 am	Khan	Hussain	1 min	249
7/7/07	11:48 am	Khan	Hussain	12 min	248, 249
7/10/07	11:44 pm	Khan	Hussain	16 min	249
7/11/07	9:34 pm	Hussain	Khan	11 min	248
7/12/07	9:00 am	Hussain	Khan	1 min	248
7/12/07	9:01 am	Hussain	Khan	5 min	248
7/13/07	1:17 pm	Galleon	Khan	22 min	1400-B
7/13/07	1:39 pm	Rajaratnam	Horowitz	"se ll all the goog in all accounts.. reached my price [t]arget"	1537, 2450
7/16/07	4:09 pm	Rajaratnam	Khan	1 min	200
7/16/07	5:07 pm	Hussain	Khan	2 min	248
7/17/07	7:17 am	Rajaratnam	Khan	5 min	200
7/17/07	4:56 pm	Khan	Rajaratnam	12 min	200
7/19/07	10:33 am	Khan	Rajaratnam	5 min	200

* Eastern Standard Time.

**GOVERNMENT
EXHIBIT
58**
S2 09 Cr. 1184 (RJH)

GX 59

**Roomy Khan Trading in Google Securities
From July 13, 2007 Through July 20, 2007**

Person / Account	Date	Buy/Sell	Description	GX
Roomy Khan	7/12/07	Buy	100 put option contracts	156
Roomy Khan	7/13/07	Buy	16 put option contracts	156
Roomy Khan	7/16/07	Buy	200 put option contracts	156
Roomy Khan	7/18/07	Buy	250 put option contracts	156
Roomy Khan	7/19/07	Buy	566 put option contracts	156
Roomy Khan	7/20/07	Buy	400 put option contracts	156

**GOVERNMENT
EXHIBIT
59**

S2 09 Cr. 1184 (RJH)

GOV-00007814

GX 60

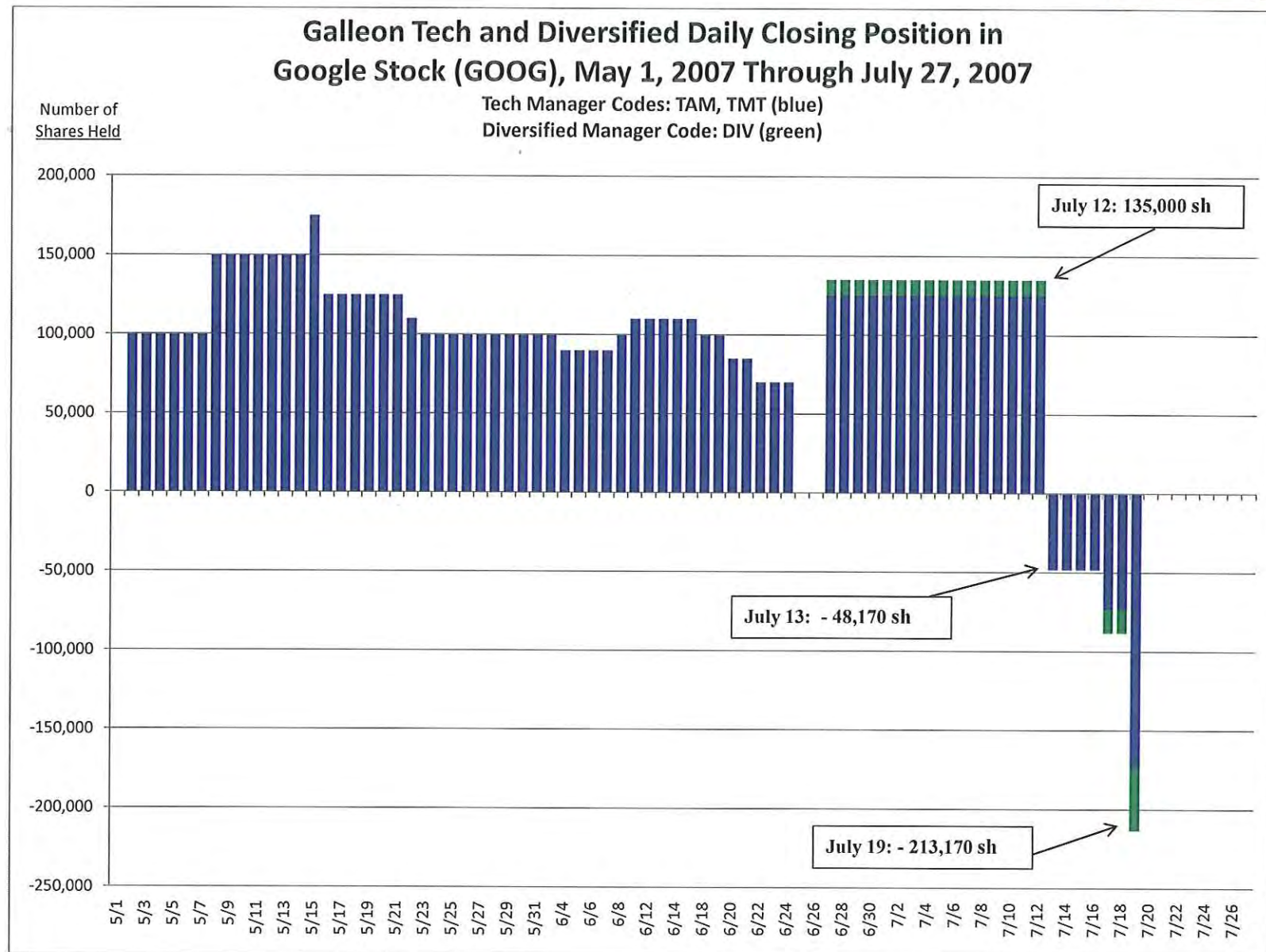
GX 60

**Galleon Tech and Diversified Trading in Google Securities
From July 13, 2007 Through July 20, 2007**

Fund	Manager Code	Date	Time	Buy/ Sell	Description	GX
Galleon Tech	TAM	7/13/07	3:03 pm*	Sell	125,000 shares	150, 100-I
Galleon Tech	TAM	7/13/07	3:20 pm*	Sell short	48,170 shares	150, 100-I
Galleon Tech	TMT	7/13/07	3:34 pm	Buy	2,000 put option contracts	150, 104-C, 304
Diversified	DIV	7/13/07	3:03 pm*	Sell	10,000 shares	150, 100-I
Galleon Tech	TMT	7/16/07	10:40 am	Buy	2,000 put option contracts	150, 104-C, 304
Galleon Tech	TMT	7/17/07	11:55 am	Sell short	25,000 shares	150, 100-I, 350
Galleon Tech	TMT	7/17/07	11:55 am	Buy	1,000 put option contracts	150, 104-C, 304
Diversified	DIV	7/17/07	12:01 pm	Sell Short	15,000 shares	150, 100-I, 350
Galleon Tech	TMT	7/18/07	10:48 am	Buy	1,600 put option contracts	150, 104-C, 304, 305
Galleon Tech	TMT	7/18/07	10:58 am	Sell	500 put option contracts	150, 104-C, 305
Galleon Tech	TMT	7/19/07	9:40 am	Sell short	100,000 shares	150, 100-I, 350
Diversified	DIV	7/19/07	10:43 am	Sell short	25,000 shares	150, 100-I, 350

* Order time based on Galleon OMS data.

GX 61



GX 64

GX 64

Certain Communications In January 2006

Date	Time*	From	To	Duration/ Content	GX
1/9/06	2:47 pm	Khan	Rajaratnam	"donot buy plem till I [g]et guidance; want to make sure guidance OK"	1453
1/9/06	5:45 pm	Khan	Rajaratnam	"hi"	1457
1/10/06	9:58 am	Khan	Rajaratnam	"hi; uthere?"	1458
1/10/06	10:14 am	Khan	Rajaratnam**	1 minute	250
1/10/06	10:59 am	Khan	Rajaratnam	1 minute	200, 250
1/11/06	12:53 pm	Khan	Rajaratnam**	1 minute	250
1/11/06	4:34 pm	Khan	Rajaratnam	1 minute	200, 250
1/11/06	9:01 pm	Bhalla	Khan**	6 minutes	227
1/12/06	10:30 am	Khan	Rajaratnam	"hi; u there?"	1459
1/12/06	10:33 am	Rajaratnam	Horowitz	"buy 60 plem"	1460
1/13/06	12:43 pm	Khan	Rajaratnam	"hi; u there?; want to go through some things"	1461
1/17/06	9:50 am	Rajaratnam	Horowitz	"buy 50 plem"	1462
1/20/06	4:30 pm	Khan	Bhalla	1 minute	227, 250
1/20/06	9:46 pm	Bhalla	Khan**	2 minute	227, 250
1/20/06	9:47 pm	Bhalla	Khan**	1 minute	227
1/20/06	11:07 pm	Bhalla**	Khan	1 minute	250
1/24/06	11:30 am	Khan	Rajaratnam	"hi"	1463
1/24/06	1:50 pm	Rajaratnam	Horowitz	"buy 75 plem"	1464

1/25/06	4:38 pm	Khan	Rajaratnam	"great call isil"	1454
1/26/06	2:31 pm	Rajaratnam	Khan	"hey..tks for plem idea"	1455

* Eastern Standard Time.

** Call does not appear in this phone record.

GX 65

GX 65

Galleon Tech Trading in Polycom Stock (PLCM)
From January 10 to January 25, 2006

Fund	Manager Code	Date	Order Time	Buy/Sell	Description	GX
Galleon Tech	GLT	1/10/06	12:05 pm*	Buy	7,500 shares	150, 100-C
Galleon Tech	GLT	1/11/06	12:06 pm*	Buy	5,000 shares	150, 100-C
Galleon Tech	GRC	1/12/06	10:36 am	Buy	60,000 shares	150, 100-C, 302
Galleon Tech	GLT	1/12/06	10:48 am*	Buy	15,000 shares	150, 100-C
Galleon Tech	GRC	1/17/06	9:51 am	Buy	50,000 shares	150, 100-C 300
Galleon Tech	GRC	1/19/06	11:53 am	Buy	25,000 shares	150, 100-C 303
Galleon Tech	GRC	1/24/06	1:53 pm	Buy	75,000 shares	150, 100-C 301
Galleon Tech	GLT	1/24/06	3:44 pm*	Buy	7,500 shares	150, 100-C

* Order time from Galleon OMS data.

GX 532-T

**GOVERNMENT
EXHIBIT
532-T**

S2 09 Cr. 1184 (RJH)

1 DATE: July 24, 2008
2
3 TIME: 9:18 PM
4
5 WIRETAP: OVER 917-907-2350
6
7 CALL FROM: DANIELLE CHIESI (212-838-5321)
8
9 CALL TO: RAJ RAJARATNAM (917-907-2350)
10
11 KEY: Unintelligible: UI
12 Inaudible: IA
13 Phonetic Spelling: PH
14 Voice Overlap: //
15

16
17 DANIELLE CHIESI: (UI), Raj.
18

19 RAJ RAJARATNAM: Hello.
20

21 DANIELLE CHIESI: Raj, you better listen to me. Now you got two choices. [REDACTED]
22 [REDACTED]
23

24 RAJ RAJARATNAM: Uh-huh.
25

26 DANIELLE CHIESI: O.K. Or you can just let me make a little bit of money too. O.K.?
27 Akamai.
28

29 RAJ RAJARATNAM: Uh-huh.
30

31 DANIELLE CHIESI: They're gonna, please don't fuck me on this (UI) I'm not short
32 anything. I'm not trading it anymore, but I'm trading it tomorrow.
33

34 RAJ RAJARATNAM: Yeah.
35

36 DANIELLE CHIESI: They're gonna guide down. I just got a call from my guy. I played
37 him like a finely tuned piano. And then...
38

39 RAJ RAJARATNAM: Uh-huh.
40

41 DANIELLE CHIESI: ...he just called me now. I was talking about the family and
42 everything, and then he said, "People think it's gonna go to 25.
43 They print on Wednesday."

1
2 RAJ RAJARATNAM: I'm short it you know that, right?
3
4 DANIELLE CHIESI: Yeah, but please just give me a chance to short it a little bit. I'm
5 not involved.
6
7 RAJ RAJARATNAM: I'm not gonna say anything. You short it as much as you want.
8
9 DANIELLE CHIESI: O.K. I haven't... I'm not shorted it at all. What I want to do, we
10 have 'til Wednesday. If we... But just between the two of us, and
11 just between us, that's it.
12
13 RAJ RAJARATNAM: Right, yep.
14
15 DANIELLE CHIESI: Let's just play this thing. They think it's gonna go to 25. We just
16 short into this. Short into this. They guide down, Raj. Nobody.
17
18 RAJ RAJARATNAM: Yeah.
19
20 DANIELLE CHIESI: Right?
21
22 RAJ RAJARATNAM: Nobody expects it. Yeah.
23
24 DANIELLE CHIESI: Nobody will expect it. It sucks, but you know what? They think
25 internally the stock goes to 25. And you know what, baby, I don't
26 know about you, but I need it.
27
28 RAJ RAJARATNAM: That's an easy one for you.
29
30 DANIELLE CHIESI: No. For me?
31
32 RAJ RAJARATNAM: Yeah, well I'm there already.
33
34 DANIELLE CHIESI: For, uh... Honey, you know what? It's for us. You know what, I
35 could very easily start shortening it without telling you. I'd never
36 do that, because we share everything.
37
38 RAJ RAJARATNAM: No. No. No.
39
40 DANIELLE CHIESI: I want you to be on top. We need to be a team, but, Raj...
41
42 RAJ RAJARATNAM: (UI)
43

1 DANIELLE CHIESI: [REDACTED]
2 [REDACTED] I'll
3 tell you how I got this guy to trust me again.
4
5 RAJ RAJARATNAM: Right.
6
7 DANIELLE CHIESI: But took, like it took a little bit of time, but, but this is the, the fact
8 that...and I, I acted like I didn't even care. I was just talking about
9 the family and like, "You're the only person in the family that
10 helps me." And then...
11
12 RAJ RAJARATNAM: (UI)
13
14 DANIELLE CHIESI: ...he, and then he, and then he said, You know, oh, by the way
15 we're gonna guide down on Wednesday. And then I said, Oh,
16 really? And then whatever, I skirted it over it, and then he said,
17 Yeah. We're gonna guide down a lot. People internally are saying
18 it's gonna go to 25. Our stock. I don't know if it's gonna go down
19 that low. But we, you know what? We figure out if we don't, I
20 don't want, you know, fuck Peter Schwartz and fuck your whole
21 desk. I don't want anybody to know.
22
23 RAJ RAJARATNAM: Yeah. Radio silent. If you just do radio silent. You do what you
24 have to do.
25
26 DANIELLE CHIESI: Believe me, I'm... Yeah. Yeah. I'm radio silent, but, but...
27
28 RAJ RAJARATNAM: When do they report? On Wednesday?
29
30 DANIELLE CHIESI: Wednesday.
31
32 RAJ RAJARATNAM: Yeah.
33
34 DANIELLE CHIESI: Can't wait. (Exhales)
35
36 RAJ RAJARATNAM: We got few more days, Friday, Monday, Tuesday.
37
38 DANIELLE CHIESI: (UI) well yeah. We just, we go slow.
39
40 RAJ RAJARATNAM: Yeah.
41
42 DANIELLE CHIESI: Just keep shorting, everyday. We've got a lot of days. Nobody
43 knows anything. Short. Short. Short. Nobody's gonna know

1 anything. And then nobody we'll to and then Wednesday we'll see
2 where the stock is. We'll just go (UI). If nobody knows anything,
3 nobody knows anything, we have a chance, O.K. This thing could
4 gap down so huge and I want, I...
5
6 RAJ RAJARATNAM: (UI).
7
8 DANIELLE CHIESI: ...I want Peter Schwartz to call me and I'll say, "I have no idea. I
9 have no idea. I have no idea."
10
11 RAJ RAJARATNAM: Right. O.K. (UI)...
12
13 DANIELLE CHIESI: That's the best thing I've heard today. How about you?
14
15 RAJ RAJARATNAM: That's... Yeah. That's good news. Yep. O.K.
16
17 DANIELLE CHIESI: All right. Bye.
18
19 RAJ RAJARATNAM: O.K.
20
21
22 [END OF CALL]

GX 543-T

GX 543-T

**GOVERNMENT
EXHIBIT
543-T**

"S2 09" Cf. T184 (RJJ)

1 DATE: July 30, 2008
2
3 TIME: 5:30 PM
4
5 WIRETAP: OVER 917-907-2350
6
7 CALL FROM: RAJ RAJARATNAM (917-907-2350)
8
9 CALL TO: DANIELLE CHIESI (212-888-9434)
10
11 KEY: Unintelligible: UI
12 Inaudible: IA
13 Phonetic Spelling: PH
14 Voice Overlap: //
15

16
17 DANIELLE CHIESI: Dani.
18

19 RAJ RAJARATNAM: Hi Dani, Raj. I just wanted to say, thank you.
20

21 DANIELLE CHIESI: And I want to tell you, that it's my pleasure. I'm, well you know, I
22 think we did a great...
23

24 RAJ RAJARATNAM: // You know what, I think you did it in such a classy way. In the
25 sense that you didn't call him, you know, and that way you
26 maintain the relationship. You don't have to tell him that you
27 played it hard, you know whatever, right?
28

29 DANIELLE CHIESI: No, I know, but I think you, you know I thought it through, and,
30 and part of this whole, you know, with game that we're playing
31 and the job that we've chosen to do.
32

33 RAJ RAJARATNAM: Uh-hum.
34

35 DANIELLE CHIESI: // Is about talking to somebody like you, you and I can... I
36 strategize with you, you do whatever you want to do, but I need.
37

38 RAJ RAJARATNAM: // Uh-hum.
39

40 DANIELLE CHIESI: Sometimes I need to think out loud. So I wanna to talk to you...
41

42 RAJ RAJARATNAM: // Right.
43

1 DANIELLE CHIESI: ...and say like, "Do you think that," and I can go back and forth on
2 my strategy.
3
4 RAJ RAJARATNAM: Yeah.
5
6 DANIELLE CHIESI: But I think that my strategy will be... You know, 'cause you said,
7 you know, "Dani, let's just go for it." And, and, you know, I, it, it
8 worked out, in, you know, in our favor. And I really am beyond
9 excited because I needed this, but, I really did.
10
11 RAJ RAJARATNAM: I hope you (UI) because you were (UI)
12
13 DANIELLE CHIESI: And, you know what...
14
15 RAJ RAJARATNAM: // (UI)...., right?
16
17 DANIELLE CHIESI: ... it's not, it's not that much of...
18
19 RAJ RAJARATNAM: But it's a conquest, right?
20
21 DANIELLE CHIESI: It's a conquest. It's mentally, it's mentally fabulous for me.
22 Mentally fabulous for me. And on top of that, though, uh, I feel as
23 though, like, let's go. And then I make decisions from a position
24 of strength. And I feel that, no, I, I, love the way that I feel, like
25 the, you know you put, "What are you gonna do, Danielle, you
26 connect the dots, if you lose and you're wrong." You're a warrior,
27 I'm a warrior. So, like, I can take the pain, but I'm gonna go with
28 what I think is the right thing to do. I shut...
29
30 RAJ RAJARATNAM: // Yeah.
31
32 DANIELLE CHIESI: ...my mouth, this poor thing is gonna go down. [Chuckles]
33
34 RAJ RAJARATNAM: This thing went down so much. Because I was looking at...
35
36 DANIELLE CHIESI: // Are you surprised?
37
38 RAJ RAJARATNAM: // Uh, I thought it might go to 27 or something, right? If they
39 guided down.
40
41 DANIELLE CHIESI: Yeah, but you know what? It's because they didn't...
42
43 RAJ RAJARATNAM: // You know but...

1
2 DANIELLE CHIESI: ...guide down enough.
3
4 RAJ RAJARATNAM: // (UI). You know what I did though?
5
6 DANIELLE CHIESI: What?
7
8 RAJ RAJARATNAM: // I saw the (UI) and the stock was at 28.50. And, I banged it,
9 because I sold another 150 thousand.
10
11 DANIELLE CHIESI: Yeah.
12
13 RAJ RAJARATNAM: Because I knew that uh, (UI) uh, that's uh, what you call it uh, that
14 price... When the, the commentary, the interview that he did,
15 seemed to indicate that he was uh, going to guide badly, you
16 know?
17
18 DANIELLE CHIESI: Yeah.
19
20 RAJ RAJARATNAM: And, so you don't have to, you know, you can be if your focused.
21
22 DANIELLE CHIESI: If you're focused.
23
24 RAJ RAJARATNAM: Right.
25
26 DANIELLE CHIESI: It's not just about numbers, it's about listening to...
27
28 RAJ RAJARATNAM: Listening carefully.
29
30 DANIELLE CHIESI: // And it's about knowing the people that you, that are speaking.
31
32 RAJ RAJARATNAM: Right.
33
34 DANIELLE CHIESI: Right so if somebody says something. I don't even, I never even
35 asked a question, and we nailed the stock.
36
37 RAJ RAJARATNAM: // Right.
38
39 DANIELLE CHIESI: The interesting part about what we just accomplished is, I never
40 asked a question.
41
42 RAJ RAJARATNAM: Right, that's (UI)...
43

1 DANIELLE CHIESI: // But I got the answer.
2
3 RAJ RAJARATNAM: Exactly
4
5 DANIELLE CHIESI: // With never asking a question. And so, when you know the way
6 somebody changes.
7
8 RAJ RAJARATNAM: Um-hum.
9
10 DANIELLE CHIESI: // And I am, and you know, I, like days like today. And then I feel
11 like, let's just go with Cisco, I don't ever get too cocky, Raj.
12 (Chuckles) But, I got tell you something. You know, right now,
13 I'm going to the consulate, the Chinese consulate to meet these
14 Chinese people. I wanna own China as you know, I need to own
15 them.
16
17 RAJ RAJARATNAM: Yeah.
18
19 DANIELLE CHIESI: // So, I'm gonna' meet the ambassador, you know the coolest
20 part? I'm going in there with so much confidence right now. I,
21 this, this is so big for me. I got it actually.
22
23 RAJ RAJARATNAM: // (UI) you know what, I really you know, I had, I feel the same
24 way (UI) with all these things. I mean, any... I have like, (UI)
25 position, it's like 300,000 for me, right? So that's like 300,000,
26 Akamai had 300,000... (UI) right?
27
28 DANIELLE CHIESI: Yeah.
29
30 RAJ RAJARATNAM: I feel like, you know
31
32 DANIELLE CHIESI: Talk into the phone, you're breaking up though. What? Baby?
33
34 RAJ RAJARATNAM: Yeah.
35
36 DANIELLE CHIESI: Talk into... say that again. So, about Google and Akamai.
37
38 [END OF CALL]

GX 1406

GX 1406



Invoice Number	Invoice Date	Account Number	Page
2-211-55458	Aug 17, 2007	2412-0107-4	3 of 4

FedEx Express Shipment Detail By Payor Type (Original)

Dropped off: Jul 19, 2007 Cust. Ref.: NO REFERENCE INFORMATION Ref. #2
 Payor: Shipper Ref. #3

Fuel Surcharge - FedEx has applied a fuel surcharge of 13.50% to this shipment.

Distance Based Pricing, Zone 2

Package Delivered to Recipient Address - Release Authorized

Automation	USAB	Sender	Recipient
Tracking ID	857528176049	MARLEEN	MS HUSSAIN
Service Type	FedEx Standard Overnight	DIGITAL AGE MANAGEMENT	-
Package Type	FedEx Envelope	168 ISABELLA AVE	43667 SKYE RD
Zone	02	ATHERTON CA 94027-4034 US	FREMONT CA 94539 US
Packages	1		
Rated Weight	N/A		
Delivered	Jul 20, 2007 11:15	Transportation Charge	12.45
Svc Area	A2	Fuel Surcharge	1.98
Signed by	99999999999999	Residential Delivery	2.20
FedEx Use	020022221/0000200/02	Total Charge	USD \$16.63

Dropped off: Jul 23, 2007 Cust. Ref.: NO REFERENCE INFORMATION Ref. #2
 Payor: Shipper Ref. #3

Fuel Surcharge - FedEx has applied a fuel surcharge of 13.50% to this shipment.

Distance Based Pricing, Zone 2

Automation	USAB	Sender	Recipient
Tracking ID	857528176071	ROOMY KHON	JON DOWNEY
Service Type	FedEx Priority Overnight	DIGITAL AGE MANAGEMENT	BEAR STEARNS & CO
Package Type	FedEx Envelope	168 ISABELLA AVE	ONE SANSOME ST
Zone	02	ATHERTON CA 94027-4034 US	SAN FRANCISCO CA 94104 US
Packages	1		
Rated Weight	N/A		
Delivered	Jul 24, 2007 09:26	Transportation Charge	14.50
Svc Area	A1	Fuel Surcharge	1.96
Signed by	G.CORTEZA	Total Charge	USD \$16.46
FedEx Use	02042232/0000186/_		

Dropped off: Aug 03, 2007 Cust. Ref.: NO REFERENCE INFORMATION Ref. #2
 Payor: Shipper Ref. #3

Fuel Surcharge - FedEx has applied a fuel surcharge of 13.50% to this shipment.

Distance Based Pricing, Zone 4

FedEx has audited this shipment for correct packages, weight, and service. Any changes made are reflected in the invoice amount.

Automation	USAB	Sender	Recipient
Tracking ID	862054811146	SAKHAWAT KHAN	CONSULATE GENERAL OF ARGENTINA
Service Type	FedEx Priority Overnight	DIGITAL AGE MANAGEMENT	5055 WILSHIRE BLVD STE 210
Package Type	FedEx Pak	168 ISABELLA AVE	LOS ANGELES CA 90036 US
Zone	04	ATHERTON CA 94027-4034 US	
Packages	1		
Rated Weight	1.0 lbs, 0.5 kgs		
Delivered	Aug 06, 2007 09:40	Transportation Charge	26.85
Svc Area	A1	Fuel Surcharge	3.62
Signed by	F.MARTINE	Total Charge	USD \$30.47
FedEx Use	021520145/0001530/_		

Dropped off: Aug 08, 2007 Cust. Ref.: NO REFERENCE INFORMATION Ref. #2
 Payor: Shipper Ref. #3

Fuel Surcharge - FedEx has applied a fuel surcharge of 14.00% to this shipment.

Distance Based Pricing, Zone 7

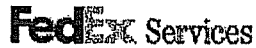
Automation	USAB	Sender	Recipient
Tracking ID	862054812407	SAKHAWAT KHAN	REFUNDS DEPT
Service Type	FedEx 2Day	DIGITAL AGE MANAGEMENT	ORBITZ INC
Package Type	FedEx Envelope	168 ISABELLA AVE	1961 PREMIER DR STE 150
Zone	07	ATHERTON CA 94027-4034 US	MANKATO MN 56001 US
Packages	1		
Rated Weight	N/A		

Continued on next page

**GOVERNMENT
EXHIBIT**

1406

S2 09 Cr. 1184 (RJH)



FedEx Services | eCQS | EDR Home Page | Data Viewer

Searching database instance old0 for Airbill # 857528176049 with a ship date of 07/19/2007 and a range of +/- 15 days.

PACKAGE DETAILS:

Tracking No:	857528176049	Ship Date:	07/19/2007
Shipper Account No:	241201074		
Shipper:	MARLEEN DIGITAL AGE MANAGEMENT 168 ISABELLA AVE ATHERTON, CA 940274034 US	Recipient:	MS HUSSAIN 43667 SKYE RD FREMONT, CA 94539 US

DELIVERY INFORMATION/SPOD Letter:

Signed For By:	99999999999999
Delivered to:	43667 SKYE RD
Delivery Date:	07/20/2007
Delivery Time:	11:15

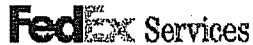
1 airbill(s) matched your query.

WEB Development by Toby Smischny
Copyright, 2001. FedEx Services.
All rights reserved.

[Feedback](#)

Page updated:03/18/2000 00:10:26

Access Count: 4344456



FedEx Services | eCQS | EDR Home Page | Data Viewer

Searching database instance old0 for airbill # 857528176049 with a ship date of 20070719

AIRBILL_NBR:	857528176049
SEQUENCE_NBR:	2454301000
FORM_CD:	215
PICKUP_STATUS_CD:	00
MASTER_AIRBILL_NBR:	
SEP_ASSOCIATION_TYPE_CD:	
SEP_PKG_CREATE_DT:	23:46 07/19/2007
PICKUP_TMSTP:	16:46 07/19/2007
PICKUP_LOC_CD:	PAOA
PICKUP_EMPLOYEE_NBR:	
SERVICE_TYPE_CD:	05
HANDLING_CODE_GRP:	
COMMITMENT_CD:	A2
DEST_LOC_CD:	HWDA
SHIPPER_ACCOUNT_NBR:	241201074
SHIPPER_COUNTRY_CD:	US
SHIPPER_POSTAL_CD:	940274034
SHIPPER_STATE_CD:	CA
SHIPPER_CUSTOMER_NM:	MARLEEN
SHIPPER_COMPANY_NM:	DIGITAL AGE MANAGEMENT
SHIPPER_ADDRESS_DESC:	168 ISABELLA AVE
SHIPPER_ADDRESS2_DESC:	
SHIPPER_CITY_NM:	ATHERTON
RECIPIENT_COUNTRY_CD:	US
RECIPIENT_POSTAL_CD:	94539
RECIPIENT_STATE_CD:	CA
RECIPIENT_CUSTOMER_NM:	MS HUSSAIN
RECIPIENT_COMPANY_NM:	-
RECIPIENT_ADDRESS_DESC:	43667 SKYE RD
RECIPIENT_ADDRESS2_DESC:	
RECIPIENT_CITY_NM:	FREMONT
ACCOUNT_NBR:	
SHIPPER_REFERENCE_NBR:	
DOCUMENT_CONTROL_NBR:	071986928001587
DELIVERY_STATUS_CD:	Release Signature on File (DDEX 02)
SIGNATURE_REC_NBR:	
SIGNATURE_REC_LINE_NBR:	
RECEIVER_NM:	9999999999999
PLACE_PACKAGE_LEFT_CD:	Residential (4)
DELIVERY_TMSTP:	11:15 07/20/2007

<http://spod.prod.fedex.com/~edrdv/bin/find.cgi?QUERY=DETAILS&AIRBILL=857528...> 12/10/2009

USA-000144000

DELIVERY_ADDRESS_DESC: 43667 SKYE RD
DELIVERY_ADDRESS2_DESC:
DELIVERY_ROUTE_NBR: 254
DELIVERY_EMPLOYEE_NBR: 112089
DELIVERY_COMMENT_DESC: FRONT DOOR
RELEASE_FLG:
EXCEPTION_HISTORY_GRP:
UPDATE_QTY:
LAST_UPDATE_TMSTP:
TIMEZONE_CHANGE_CD:

WEB Development by Toby Smischny
Copyright, 2001. FedEx Services.
All rights reserved.

[Feedback](#)

Page updated:08/04/1998 11:12:18

Access Count: 1562522

14
32

FedEx Express **US Airbill** 8575 2817 6049 0215 **FedEx Copy**

1 From
Date July 19 **Sender's FedEx Account Number** 2412-0107-4
Sender's Name Harsen **Phone** 650 327-1524
Company DIGITAL AGE MANAGEMENT
Address 168 ISABELLA AVE
City ATHERTON **State** CA **ZIP** 94027-4034

2 Your Internal Billing Reference

3 To
Recipient's Name Ms. Hussar **Phone** 510 921-4190
Company
Recipient's Address 43667 SKye Road
Address
City Fremont **State** CA **ZIP** 94539

4a Express Package Service
☒ **1** FedEx Priority Overnight **5** ☒ FedEx Standard Overnight
☐ **2** FedEx 2Day **20** ☐ FedEx Express Saver
☐ **3** FedEx 1Day Freight **8** ☐ FedEx 2Day Freight
☐ **4** FedEx Freight **83** ☐ FedEx 3Day Freight

4b Express Freight Service
☐ **7** FedEx 1Day Freight **8** ☐ FedEx 2Day Freight
☐ **8** FedEx 3Day Freight

5 Packaging
☒ **6** FedEx Envelope **2** ☐ FedEx Pak **3** ☐ FedEx Box **4** ☐ FedEx Tube **1** ☐ Other

6 Special Handling
☒ **3** **SATURDAY DELIVERY** **1** ☐ **HOLD Weekday** **31** ☐ **HOLD Saturday**

7 Payment
☒ **1** **Sender** **2** ☐ **Recipient** **3** ☐ **Third Party** **4** ☐ **Credit Card** **5** ☐ **Cash/Check**

8 NEW Residential Delivery Signature Options
☐ **No Signature Required** **10** ☐ **Direct Signature** **34** ☐ **Indirect Signature**

Barcode 8575 2817 6049

0339412143

519

FedEx US Airbill
Express

8617 7209 7943

0200

Form
10-10

FedEx Copy

1 From 1/31 Sender's FedEx Account Number
 Date
 Sender's Name Mohammad Rouf Phone 618 531-1629
 Company
 Address 12 Sierra Dr.
 City Glen Carbon State IL ZIP 62034

2 Your Internal Billing Reference

3 To Recipient's Name Raymond Rouf Phone 217 390-8251
 Company c/o Shanimara Hussain
 Recipient's Address 43667 SKYE Road
 We cannot deliver to P.O. boxes or P.O. ZIP codes.
 Address
 No request to package be held at a specific FedEx location, print FedEx address here.
 City Fremont State CA ZIP 94539



8617 7209 7943

4a Express Package Service
☒ FedEx Priority Overnight
 Next business morning* Friday delivery to hold for delivery on Saturday unless SATURDAY Delivery is selected.
☐ FedEx Standard Overnight
 Next business morning* Saturday Delivery NOT available.
☐ FedEx First Overnight
 Coldest next business morning delivery to select locations. Saturday Delivery NOT available.
☐ FedEx 2Day
 Second business day* Thursday delivery to hold for delivery on Saturday unless SATURDAY Delivery is selected.
☐ FedEx Express Saver
 Third business day* Saturday Delivery NOT available.
 *FedEx packages may not be available. Minimum charge: One-pound rate.
 **To meet location.

4b Express Freight Service
☐ FedEx 1Day Freight*
 Next business day* Friday delivery to hold for delivery on Saturday unless SATURDAY Delivery is selected.
☐ FedEx 2Day Freight
 Second business day* Thursday delivery to hold for delivery on Saturday unless SATURDAY Delivery is selected.
☐ FedEx 3Day Freight
 Third business day* Saturday Delivery NOT available.
 *To meet location.

5 Packaging
☒ FedEx Envelope*
☐ FedEx Pak*
 Includes FedEx Small Pak, FedEx Large Pak, and FedEx Heavy Pak.
☐ FedEx Box
☐ FedEx Tube
☐ Other
 *Declared value limit \$500.

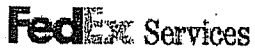
6 Special Handling
☒ SATURDAY DELIVERY
 Include FedEx address in location 3.
☐ HOLD Wednesday at FedEx Location
 Not available for FedEx First Overnight.
☐ HOLD Saturday at FedEx Location
 Available ONLY for FedEx Priority Overnight and FedEx 2Day to select locations.
 Does this shipment contain dangerous goods?
☒ No
☐ Yes
 If yes, see 6500 for instructions.
☐ Yes
 Shipper's Declaration Not Required.
☐ Dry Ice
 By FedEx, UN 1845
☐ Cargo Aircraft Only
 Dangerous goods including dry ice container subject to FedEx packaging.

7 Payment Bill for
☐ Sender
 FedEx bill to bill
☐ Recipient
☐ Third Party
☒ Credit Card
☐ Cash/Check
 Enter FedEx Acc. No. or Credit Card No. in location 3.
 Double Check Acc. No.
 FedEx and Bill Credit Card No.
 Date

Total Packages Total Weight Total Declared Value
 \$ 30.99
 *The liability is limited to \$500 unless you declare a higher value. See the current FedEx Service Guide for details. Credit Card Auth.

8 Residential Delivery Signature Options
 If you require a signature, check Direct or Indirect.
☐ No Signature Required
 Packages may be left without obtaining a signature for delivery.
☒ Direct Signature
 Signature of addressee at delivery. For options, see 6500.
☐ Indirect Signature
 If you are to provide an addressee's address, someone at a neighboring address may sign for delivery. For options, see 6500.
 520
 Rev. Date 10/09/2016 FTX201-01/04-2016 FedEx-PRINTED IN U.S.A. 021

DELIVERED BY AIR - 06/06/2017 10:00 AM - 10:00 AM



FedEx Services | eCQS | EDR Home Page | Data Viewer

Searching database instance old0 for Airbill # 857528176049 with a ship date of 07/19/2007 and a range of +/- 15 days.

PACKAGE DETAILS:

Tracking No:	857528176049	Ship Date:	07/19/2007
Shipper Account No:	241201074		
Shipper:	MARLEEN DIGITAL AGE MANAGEMENT 168 ISABELLA AVE ATHERTON, CA 940274034 US	Recipient:	MS HUSSAIN 43667 SKYE RD FREMONT, CA 94539 US

DELIVERY INFORMATION/SPOD Letter:

Signed For By:	9999999999999999
Delivered to:	43667 SKYE RD
Delivery Date:	07/20/2007
Delivery Time:	11:15

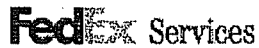
1 airbill(s) matched your query.

WEB Development by Toby Smlschny
Copyright, 2001. FedEx Services.
All rights reserved.

[Feedback](#)

Page updated:03/18/2000 00:10:26

Access Count: 4344456



FedEx Services | eCQS | EDR Home Page | Data Viewer

Searching database instance old0 for airbill # 857528176049 with a ship date of 20070719

AIRBILL_NBR:	857528176049
SEQUENCE_NBR:	2454301000
FORM_CD:	215
PICKUP_STATUS_CD:	00
MASTER_AIRBILL_NBR:	
SEP_ASSOCIATION_TYPE_CD:	
SEP_PKG_CREATE_DT:	23:46 07/19/2007
PICKUP_TMSTP:	16:46 07/19/2007
PICKUP_LOC_CD:	PAOA
PICKUP_EMPLOYEE_NBR:	
SERVICE_TYPE_CD:	05
HANDLING_CODE_GRP:	
COMMITMENT_CD:	A2
DEST_LOC_CD:	HWDA
SHIPPER_ACCOUNT_NBR:	241201074
SHIPPER_COUNTRY_CD:	US
SHIPPER_POSTAL_CD:	940274034
SHIPPER_STATE_CD:	CA
SHIPPER_CUSTOMER_NM:	MARLEEN
SHIPPER_COMPANY_NM:	DIGITAL AGE MANAGEMENT
SHIPPER_ADDRESS_DESC:	168 ISABELLA AVE
SHIPPER_ADDRESS2_DESC:	
SHIPPER_CITY_NM:	ATHERTON
RECIPIENT_COUNTRY_CD:	US
RECIPIENT_POSTAL_CD:	94539
RECIPIENT_STATE_CD:	CA
RECIPIENT_CUSTOMER_NM:	MS HUSSAIN
RECIPIENT_COMPANY_NM:	-
RECIPIENT_ADDRESS_DESC:	43667 SKYE RD
RECIPIENT_ADDRESS2_DESC:	
RECIPIENT_CITY_NM:	FREMONT
ACCOUNT_NBR:	
SHIPPER_REFERENCE_NBR:	
DOCUMENT_CONTROL_NBR:	071986928001587
DELIVERY_STATUS_CD:	Release Signature on File (DDEX 02)
SIGNATURE_REC_NBR:	
SIGNATURE_REC_LINE_NBR:	
RECEIVER_NM:	999999999999999
PLACE_PACKAGE_LEFT_CD:	Residential (4)
DELIVERY_TMSTP:	11:15 07/20/2007

<http://spod.prod.fedex.com/~edrdrv/bin/find.cgi?QUERY=DETAILS&AIRBILL=857528...> 12/10/2009

USA-000144014

DELIVERY_ADDRESS_DESC: 43667 SKYE RD
DELIVERY_ADDRESS2_DESC:
DELIVERY_ROUTE_NBR: 254
DELIVERY_EMPLOYEE_NBR: 112089
DELIVERY_COMMENT_DESC: FRONT DOOR
RELEASE_FLG:
EXCEPTION_HISTORY_GRP:
UPDATE_QTY:
LAST_UPDATE_TMSTP:
TIMEZONE_CHANGE_CD:

WEB Development by Toby Smischny
Copyright, 2001, FedEx Services.
All rights reserved.

[Feedback](#)

Page updated: 08/04/1998 11:12:18

Access Count: 1562522

GX 1539

**GOVERNMENT
EXHIBIT
1539**

SZ 09 Cr. 1184 (RJH)

LEHMAN BROTHERS

Please read carefully, sign and return
To Lehman Brothers Inc.
Compliance Division
Church Street Station
P.O. Box 3763
New York, NY 10008-3763

Security Account Limited Discretionary Authorization

This authorization is a limited discretionary authorization. It does not empower the agent named herein to withdraw any money, securities or other property either in the name of the principal(s) or otherwise.

Account Number
Branch 833 027 93 11 9 286

Check ☐ IR AGENT CODE 64 ☐ THIRD PARTY AGENT CODE 74

WARNING

This is an important legal document. It creates a durable power of attorney. Before executing this document, you should know these important facts:

- This document may provide the person you designate as your attorney-in-fact with broad powers to dispose, sell, convey and encumber your property.
- These powers will exist for an indefinite period of time and will continue to exist notwithstanding your subsequent disability, incompetency or incapacity.
- You have the right to revoke or terminate this durable power of attorney by giving us written notice addressed to the branch office servicing your account. Such revocation shall not affect your liability for any transaction initiated prior to our receipt of said revocation.

1. The undersigned hereby authorizes (agent's name)

Ms. Romy Khan

(whose signature appears on the reverse) as undersigned's agent and attorney-in-fact to buy, sell (including short sales) and trade in stocks, bonds, options (including uncovered short positions in option contracts) or in the uncovering of any existing short position in option contracts and any other securities and/or contracts relating to the same on margin or otherwise in accordance with your terms and conditions for the undersigned's account and risk in the undersigned's name, or number on your books. The undersigned also authorizes the agent to provide direction regarding corporate actions, reorganizations and dividend options. The undersigned understands that transactions may be effected with you as principal or dealer or through you as agent or broker, and that any such purchase may involve securities in the distribution of which you may have an interest as underwriter, member of selling group, or otherwise. The undersigned hereby agrees to indemnify and hold you harmless from and to pay you promptly on demand any and all losses arising therefrom or debit balance due thereon.

2. In all such purchases, sales or trades you are authorized to follow the instructions of the above-named person in every respect concerning the undersigned's account with you, and he or she is authorized to act for the undersigned and in the undersigned's behalf in the same manner and with the same force and effect as the undersigned might or could do with respect to such purchases, sales or trades.

3. The undersigned hereby ratifies and confirms any and all transactions with you heretofore or hereafter made by the aforesaid agent or for the undersigned's account.

4. This authorization and indemnity is in addition to (and in no way limits or restricts) any rights which you may have under any other agreement or agreements between the undersigned and your corporation.

5. To revoke this authorization, the undersigned hereby agrees to submit a written notice addressed to you and delivered to the branch office serving the account, but such revocation shall not affect any liability in any way resulting from transactions initiated prior to such revocation.

6. This agreement shall inure to the benefit of your present corporation and of any successor corporation(s) or assigns.

7. Arbitration Disclosures

- ARBITRATION IS FINAL AND BINDING ON THE PARTIES.
- THE PARTIES ARE WAIVING THEIR RIGHT TO SEEK REMEDIES IN COURT, INCLUDING THE RIGHT TO JURY TRIAL.
- PRE-ARBITRATION DISCOVERY IS GENERALLY MORE LIMITED THAN AND DIFFERENT FROM COURT PROCEEDINGS.
- THE ARBITRATORS' AWARD IS NOT REQUIRED TO INCLUDE FACTUAL FINDINGS OR LEGAL REASONING AND ANY PARTY'S RIGHT TO APPEAL OR TO SEEK MODIFICATION OF RULINGS BY THE ARBITRATORS IS STRICTLY LIMITED.
- THE PANEL OF ARBITRATORS WILL TYPICALLY INCLUDE A MINORITY OF ARBITRATORS WHO WERE OR ARE AFFILIATED WITH THE SECURITIES INDUSTRY.

ARBITRATION. Any controversy: (1) arising out of or relating to any of my accounts maintained individually or jointly with any other party, in any capacity with you; or (2) relating to my transactions or accounts with any of your predecessor firms by merger, acquisition or other business combination from the inception of such accounts; or (3) with respect to transactions of any kind executed by, through or with you, your officers, directors, agents and/or employees; or (4) with respect to this agreement or any other agreements entered into with you relating to my accounts, or the breach thereof, shall be resolved by arbitration conducted only at the New York Stock Exchange, Inc., National Association of Securities Dealers, Inc., or the American Stock Exchange, Inc., or any self-regulatory organization ("SRO") subject to the jurisdiction of the Securities and Exchange Commission and pursuant to the arbitration procedures then in effect of any such exchange or SRO as I may elect. If I do not make such election by registered mail addressed to you at your main office within 5 days after demand by you that I make such election, then you will have the right to elect the arbitration tribunal of your choice. Judgment upon any award rendered by the arbitrators may be entered in any court having jurisdiction thereof. This agreement shall be governed by the laws of the State of New York without giving effect to the choice of law or conflict of laws provisions thereof.

Continued on reverse side

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Mateo } ss.On 17th September 2003before me, Babul Sheethpersonally appeared Roony Kh

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

Name(s) of Signer(s)

☐ personally known to me☒ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in ~~his/her/their~~ authorized capacity(ies) and that by ~~his/her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Babul K. Sheeth

Signature of Notary Public

Roony Kh

OPTIONAL

Sept 17, 03

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer is Representing: _____

RIGHT THUMBPRINT
OF SIGNER:
Top of thumb here

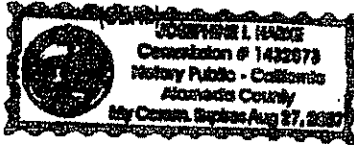
No person shall bring a putative or certified class action to arbitration, nor seek to enforce any pre-dispute arbitration agreement against any person who has initiated in court a putative class action; or who is a member of a putative class who has not opted out of the class with respect to any claims encompassed by the putative class action until: (i) the class certification is denied; (ii) the class action is decertified; or (iii) the customer is excluded from the class by the court. Such forbearance to enforce an agreement to arbitrate shall not constitute a waiver of any rights under this agreement except to the extent stated herein.

8. This authorization shall remain in full force and effect unless revoked by the undersigned in accordance with the procedures stated above or until you receive actual notice of my death or other legally mandated causes for revocation.

9. If any provision of this agreement is or becomes inconsistent with any applicable present or future law, rule or regulation, that provision will be deemed rescinded or modified in order to comply with the relevant law, rule, or regulation. All other provisions of this agreement will continue and remain in full force and effect.

10. This authorization shall not be affected by the subsequent disability, incapacity or incompetency of the undersigned nor by a lapse of time between its execution and exercise.

11. I/We acknowledge receiving a copy of this agreement.

Complete name of account <u>SUNIL K. BHALLA</u>	
This authorization contains a pre-dispute arbitration agreement which appears on the front of this form at paragraph 7.	
A. CLIENT'S SIGNATURE(S) THIS AGREEMENT MUST BE SIGNED BEFORE A NOTARY PUBLIC	Client's Signature <u>[Signature]</u>
	Client's Signature <u>[Signature]</u>
	Date <u>9/11/03</u>
	State of <u>California</u> } SS County of <u>Alameda</u>
On this <u>11th</u> day of <u>September</u> 200 <u>3</u> , before me a Notary Public for the County of <u>Alameda</u> , <u>Josephine J. Harbo</u> personally appeared <u>Sunil K. Bhalla</u> and to me known and known to me to be the individual(s) described in and who executed the above instrument, and acknowledged to me that he/she/they executed the same. <u>Josephine J. Harbo</u> SIGNATURE OF NOTARY PUBLIC IN WITNESS IN AND - U.S. JURISDICTION	
	
B. AGENT'S SIGNATURE(S)	By signing below, I the agent for the principal(s) named herein, accept this appointment and agree to be bound by the terms of this authorization including the provisions for arbitration of disputes. Being first duly sworn, I do hereby state that this authorization was executed by the principal(s) at a time when he or she was legally competent to perform such act and that it has not been terminated by any means including voluntary revocation or death of the principal(s).
SIGNATURE OF AGENT (individual to whom authorization is granted)	<u>Roomy Khan</u>
	Date <u>9/17/03</u>

Approved by Branch Mgr. <u>[Signature]</u>	Compliance Division
---	---------------------

CPI 5121

Discretionary Account Information

(to be completed for all discretionary security accounts)

Account Number	Branch	Account
833	02	793119286

CONFIDENTIAL INFORMATION

I. ACCOUNT INFORMATION - Complete part A1 for individual, joint or partnership accounts or part A2, if trust, employee benefit plan, other tax-exempt organization or corporate account. All accounts must complete part B, and sign at part C.

Complete for ALL accounts	Complete Name of Account		City	State	ZIP Code
	SUNIL K. BHALLA		Fremont	CA	94539
	Street Address				
	48485	ARKANSAS PLACE			

I. A1 - Individual, Joint or Partnership Accounts (if more than two owners, attach additional sheets as needed)

Name			Joint Party's Name		
SUNIL K. BHALLA					
Birthdate	Social Security No.	No. of Dependents	Birthdate	Social Security No.	No. of Dependents
10/10/56	[REDACTED]	4			
Occupation	Position/Title		Occupation	Position/Title	
GENERAL MANAGER	SR. VP & G.M.				
Employer	Type of Business		Employer	Type of Business	
Polycom, Inc.	Communications				
Home Phone	Business Phone		Home Phone	Business Phone	
(510) 683-3585	(408) 474-2879				
Annual Income	Marital Status		Annual Income	Marital Status	
\$350,000.	<input checked="" type="checkbox"/> Married <input type="checkbox"/> Separated <input type="checkbox"/> Single <input type="checkbox"/> Divorced <input type="checkbox"/> Widowed				
Liquid Net Worth	Total Net Worth		Liquid Net Worth	Total Net Worth	
\$300,000.00	\$700,000.00				

A2 - Trusts, Corporations, Benefit Plans and Partnerships

Type of Plan/Organization	Federal Tax ID No.
Contact Person	Title
Annual Gross Revenues	
\$	

I. B Investment Objectives

Investment Objectives	Risk Tolerance
<input checked="" type="checkbox"/> Growth <input type="checkbox"/> Current Income <input type="checkbox"/> Tax Deferral <input type="checkbox"/> Liquidity	<input checked="" type="checkbox"/> Aggressive <input type="checkbox"/> Moderate <input type="checkbox"/> Conservative
Discretion Granted To	
Mr. Prady Khan	

Reason for Granting Discretionary Authority

TO UTILIZE Prady's INVESTMENT EXPERTISE.

No. of Years Involved in Trading Securities	No. of Years Involved in Trading Options	Date Account Opened
15 yrs.	5 yrs.	
Discretion will be for		
<input checked="" type="checkbox"/> Securities <input checked="" type="checkbox"/> Sales of Covered Calls <input checked="" type="checkbox"/> Purchase of Options <input checked="" type="checkbox"/> Spreads <input checked="" type="checkbox"/> Sales of Uncovered Options <input type="checkbox"/> Debt Options <input type="checkbox"/> Foreign Currency Options		

I. C Signatures if Joint Account, Both Parties Must Sign

I agree to notify Lehman Brothers Inc. in writing of any change in my circumstances or investment objective.

Client's Signature *[Signature]*

Joint Party's Signature

For Lehman Brothers Inc. Use Only	Name of IR	Initials	Branch Manager's Approval	Date	Registered Options Principal	Date
	Thomas Casey	TCC	[Signature]	10/1/03	[Signature]	10/1/03

Discretionary Account Information (continued)

II. Complete this section for "third party" discretionary accounts only. Third Party discretionary accounts are those accounts in which the agent is NOT an employee of Lehman Brothers Inc. or one of its affiliates, divisions or subsidiaries. The information which follows pertains to the AGENT.

Agent's Name RAMY KHAN		Agent's Employer	
Agent's Home Address 168 ISABELLA AVENUE		Agent's Employer's Address	
City, State and ZIP Code ATLANTA, GA 94027		City, State and ZIP Code	
Agent's Citizenship AMERICAN		Type of Business	Position
Agent's Home Telephone No. 1650 1327 1524		Agent's Business Telephone No. ()	
How long has agent known client? 10 YEARS		What is the agent's relationship to client? FRIEND	
Does agent have a direct financial interest in the account?		<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes: Explain Thoroughly:	
Does agent receive a fee?		<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes: How Much?	
Does agent have an account with LB or its affiliates, etc?		<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes: Give Account No.: 83301076	
Is agent related to an employee of LB or its affiliates, etc?		<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes: Give Employee's Name:	
Is agent an INVESTMENT ADVISOR registered with the State and/or the S.E.C.?		<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes Yes or No: Complete the following section	
If YES	Registered with the State	File No.	Eff. Date
	State	No.	Date
If NO	Over how many accounts does agent have discretion?	At LB or its affiliates etc?	At other firms?
		NONE	NONE
List names and account numbers of other LB or affiliates etc. discretionary accounts			
Account No.		Account Name	
833 04674-17		Sangeeta Khand	
833-24254-17		Ramy Khan / TRIPTA NAQAR	
Agent's Experience in Handling Discretionary Accounts (number of years and average assets managed)		10 YRS.	

Banking and/or Commercial References
Bank Name and Address

GX 2454

GX 2454



From: Adam Smith <ASmith@galleongrp.com>
Sent: Wednesday, March 9, 2005 1:41 PM
To: Raj Rajaratnam <RajRajaratnam@galleongrp.com>
Subject: The two eyes

I had a chance to update and we are still on track

Sent from my BlackBerry Wireless Handheld (www.BlackBerry.net)

GX 2455

GX 2455



From: Adam Smith <ASmith@galleongrp.com>
Sent: Thursday, March 17, 2005 10:20 PM
To: Raj Rajaratnam <RajRajaratnam@galleongrp.com>
Subject: Eyes

Game on.

Also, I've been doing some work on EPNY. Might be interesting for us to take a look.

Sent from my BlackBerry Wireless Handheld (www.BlackBerry.net)

GX 2456

GX 2456



From: Adam Smith <ASmith@galleongrp.com>
Sent: Thursday, April 21, 2005 2:08 PM
To: Raj Rajaratnam <RajRajaratnam@galleongrp.com>
Subject: eyes

the date is set for may 16

GX 2562

GX 2562

FINAL TRANSCRIPT

Thomson StreetEvents™

AKAM - Q2 2008 Akamai Technologies Inc. Earnings Conference Call

Event Date/Time: Jul. 30. 2008 / 4:30PM ET

THOMSON

www.streetevents.com

Contact Us

© 2008 Thomson Financial. Republished with permission. No part of this publication may be reproduced or transmitted in any form or by any means without the prior written consent of Thomson Financial.

**GOVERNMENT
EXHIBIT**

2562

S2 09 Cr. 1184 (RJH)

Confidential Treatment Requested by Akamai Technologies, Inc.

AK_USAO0005162

FINAL TRANSCRIPT

Jul 30, 2008 / 4:30PM, AKAM: Q2 2008 Akamai Technologies Inc. Earnings Conference Call

CORPORATE PARTICIPANTS

Noelle Faris*Akamai Technologies Inc. - Senior Manager, Investor Relations***Paul Sagan***Akamai Technologies Inc. - President, CEO***J.D. Sherman***Akamai Technologies Inc. - CFO*

CONFERENCE CALL PARTICIPANTS

Mark Kelleher*Canaccord Adams - Analyst***Michael Turits***Raymond James & Associates - Analyst***Mark Mahaney***Citigroup - Analyst***Thomas Watts***Cowen & Co. - Analyst***Rob Sanderson***American Technology Research - Analyst***Tim Klasell***Thomas Weisel Partners - Analyst***Colby Synesael***Merriman Curhan Ford & Co. - Analyst***Rod Ratliff***Stanford Group Co. - Analyst***Srinivas Anantha***Oppenheimer & Co. - Analyst***Garrett Becker***Merrill Lynch - Analyst***Kirk Materne***Banc of America Securities - Analyst***Derek Bingham***Goldman Sachs - Analyst*

PRESENTATION

Operator

Good day, ladies and gentlemen, and welcome to the Q2 2008 Akamai Technologies earnings conference call. My name is Antoine and I will be your operator for today. At this time, all participants are in listen-only mode. We will conduct a question-and-answer session towards the end of this conference at which time you may press star followed by 1 to participate.

(OPERATOR INSTRUCTIONS). I would now like to turn the call over to Ms. Noelle Faris, Senior Manager of Investor Relations. Please proceed, ma'am.

THOMSON

www.streetevents.com

Contact Us

© 2008 Thomson Financial. Republished with permission. No part of this publication may be reproduced or transmitted in any form or by any means without the prior written consent of Thomson Financial.

FINAL TRANSCRIPT

Jul. 30: 2008 / 4:30PM, AKAM - Q2 2008 Akamai Technologies Inc. Earnings Conference Call

Noelle Faris - Akamai Technologies Inc. - Senior Manager, Investor Relations

Good afternoon, and thank you for joining Akamai's investor conference call to discuss our second quarter 2008 financial results. Speaking today will be Paul Sagan, Akamai's President and Chief Executive Officer; and J.D. Sherman, Akamai's Chief Financial Officer.

Today's presentation contains estimates and other statements that are forward-looking under the Private Securities Litigation Reform Act of 1995. These forward-looking statements are subject to risks and uncertainties and involve a number of factors that could cause actual results to differ materially from those expressed or implied by such statements.

Additional information concerning these factors is contained in Akamai's filing with the SEC, including our Annual Report on Form 10-K and quarterly reports on Form 10-Q.

The forward-looking statements included in this call represent the Company's views on July 30, 2008. Akamai disclaims any obligation to update these statements to reflect future events or circumstances. During this call, we will be referring to some non-GAAP financial measures that we believe are helpful to better understand our financial results and operations.

These non-GAAP measures are not prepared in accordance with Generally Accepted Accounting Principles. You can find definitions of these non-GAAP terms and reconciliations of these non-GAAP metrics to the most directly comparable GAAP financial measures under the News and Publications portion of the Investor Relations section of our website.

Now let me turn the call over to Paul.

Paul Sagan - Akamai Technologies Inc. - President, CEO

Thank you, Noelle, and thank you all for joining us today. Q2 was a solid quarter for Akamai with healthy earnings and revenue growth. Financial highlights for the second quarter include record revenue of \$194 million, a 27% increase over the second quarter of last year and a 4% increase over the first quarter this year, a normalized net income of \$76.5 million, or \$0.41 per diluted share.

That's a 38% increase over normalized net income from Q2 of last year and consistent with our strong Q1 results. We're especially pleased to achieve these Q2 results even as we began to see the impact of a more challenging economic environment in some customer verticals. At the same time, we continue to experience growth in many of our newer service areas such as application acceleration for business-to-business services and Dynamic Site solutions for e-commerce.

I will be back to talk about some of the trends we're seeing in the market, but first let me turn the call over to J.D. to review our second quarter results in

J.D. Sherman - Akamai Technologies Inc. - CFO

Thanks, Paul. As Paul just highlighted, our business performed well in the second quarter in a more challenging environment. For the second quarter, we grew revenue 27% year-over-year and 4% sequentially to \$194 million, at the low end of our expectation range coming into the quarter.

Our median entertainment vertical grew roughly in line with the overall business and it remained an important contributor to our second quarter financial results. But, as I mentioned last quarter, media growth has moderated from the pace we saw for several years during the period of rapid broadband adoption. Growth in our commerce vertical continued to be very strong. Again, it was our fastest growing vertical with more than a 50% increase year-over-year.

THOMSON

www.streetevents.com

Contact Us

2

© 2008 Thomson Financial. Republished with permission. No part of this publication may be reproduced or transmitted in any form or by any means without the prior written consent of Thomson Financial.

FINAL TRANSCRIPT

Jul. 30, 2008 / 4:30PM, AKAM - Q2 2008 Akamai Technologies Inc. Earnings Conference Call

We also continued to make progress with our newer value-added solutions such as application performance services, Dynamic Site solutions and Stream OS. These higher margin areas contributed to the improvement in probability in the quarter as demonstrated in both our gross margin and EBITDA results.

During the second quarter, international sales represented 26% of total revenue, up 1 point from first quarter levels. Our international business performed very well growing 8% sequentially and 45% year-over-year. Revenue in North America, where we saw the largest impact both from the economic factors and media trends grew 2% sequentially and 22% year-over-year.

Resellers represented 16% of total revenue, consistent with the prior quarter. Once again, no customer accounted for 10% or more of our revenue in Q2. Our consolidated ARPU, or average revenue per customer, was up 19% year-over-year to \$23,700 in the second quarter. This is the result of our focus on building deeper and broader relationships with our enterprise-class customers by selling new, more advanced solutions into our customer base.

We added 53 net new customers in Q2 bringing our total customer count to 2,725. Our gross adds, brand new customers to Akamai, increased to about 170 this quarter. Churn was, again, just over 4%, primarily due to churn from smaller customers. The ARPU of our new customer adds continued to be well above the average revenue of our churn customers.

Our cash gross margins for the quarter were 82%, up from 81% in Q1 and down about a point from the same period last year. As we had expected, our gross margins stabilized with the growth in sales of our Dynamic Site solutions and application performance services which have a higher gross margin than our media delivery deals. Our GAAP gross margin, which includes both depreciation and stock-based compensation, was 72% for the quarter, consistent with Q1 and down about 2 points from Q2 of last year.

GAAP operating expenses were \$88 million in the second quarter. These GAAP numbers include depreciation, amortization of intangible assets and stock-based compensation charges. Excluding these non-cash charges, our operating expenses for the quarter were \$65.9 million, up \$900,000 from the prior quarter.

Adjusted EBITDA for the second quarter was \$92.7 million, up 6% from the prior quarter and up 41% from the same period last year. And our adjusted EBITDA margin of 48% was up 5 points over the same period last year and up 1 point from the first quarter.

For the second quarter, total depreciation and amortization was \$23.4 million, up from \$22.6 million in the first quarter. These charges include \$17.7 million of network-related depreciation, \$2.2 million of G&A depreciation, and \$3.5 million of amortization of intangible assets. Net interest income for the second quarter was \$4.8 million. That's down \$2.6 million from Q1 as interest rates declined despite a growing cash balance.

Moving on to earnings, GAAP net income for the quarter for \$34.3 million, or \$0.19 of earning per diluted share. As a reminder, our GAAP net income includes non-cash charges for stock compensation related to FAS 123R and book tax charges at an effective annual rate of approximately 40%. However, because of our significant deferred tax assets we are paying cash taxes at an annualized rate of about 2%.

During the second quarter, our stock-based compensation expense was \$18 million, or \$0.10 per diluted share on a pre-tax basis. A break down of our stock-based compensation charges by operating department is available in the supplemental metrics sheet posted in the Investor Relations section of our website.

Additional non-cash items in GAAP net income for the quarter include \$3.5 million from amortization of intangible assets and a \$20.7 million non-cash tax charge. Excluding these non-cash items our normalized net income for the second quarter was \$76.5 million, 38% higher than our normalized net income for the same period last year and up \$900,000 from a strong Q1.

THOMSON

www.streetevents.com

Contact Us

© 2008 Thomson Financial. Republished with permission. No part of this publication may be reproduced or transmitted in any form or by any means without the prior written consent of Thomson Financial.

FINAL TRANSCRIPT

Jul. 30. 2008 / 4:30PM; AKAM - Q2 2008 Akamai Technologies Inc. Earnings Conference Call

In the second quarter we earned \$0.41 per diluted share on a normalized basis. That is a 37% increase year-over-year and consistent with the prior year quarter. Our normalized weighted average diluted share count for the second quarter was 189 million shares.

Now let me review some balance sheet items. Our cash generation continued to be very strong. Cash from operations for the second quarter was \$70 million. Year-to-date we've generated \$158 million of cash from operations or 41% of revenue. That is up 78% compared to last year.

At the end of Q2, we had \$745 million in cash, cash equivalents and marketable securities on the balance sheet. This balance includes \$280 million of AAA-rated, federally insured student loan auction rate securities which we continued to treat as long-term investments in Q2. In the second quarter, capital expenditures, excluding equity compensation, were roughly \$30 million.

Days sales outstanding for the quarter were 58 days, down one day from the prior quarter. Overall, we delivered a solid Q2. We were pleased with the continued growth in our traditional market verticals as well as the increased traction of our new solutions across our broad customer base which helped to improve our operating margins.

With the first half of 2008 behind us, it is becoming clear that the pressures being felt by many of our customers from the economic environment will not ease in the short term. Further, in the media space, while our clients continue to develop higher quality video initiatives, we are not expecting this trend to impact the back half of 2008 significantly enough to offset the pressure from the general economic environment.

Based on the trends we are seeing, we now expect to come in for the full year at the low end of our earlier revenue guidance or slightly below. So we are updating the guidance of revenue to \$785 million and \$800 million for the full year, or 23% to 26% growth.

As for our earnings expectations, we expect cash gross margins will trend downward by 1 to 2 points for the full year, slightly better than our previous guidance. And our full year adjusted EBITDA margins should expand by roughly 2 points compared to the full year 2007 as we said earlier.

However, with the lower than anticipated interest rates impacting our interest income as well as the slower top line growth we are also likely to be at the low end of our earnings guidance or slightly below. So we are updating our earnings guidance to \$1.63 to \$1.69 of normalized earnings per share. That would translate into year-over-year normalized net income growth of 23% to 28%.

We continue to expect capital expenditures, excluding equity compensation, to be about 15% to 16% of revenue for the year. As I mentioned on our call last quarter, this capital investment level also includes leasehold improvements we have planned for our two primary offices, costs that will offset some of the efficiencies we expect to achieve from our network operations. On a non-cash item, we now expect equity compensation to be about \$0.34 to \$0.35 per diluted share compared to our previous guidance of \$0.37 to \$0.39 per diluted share on a pre-tax basis.

Looking more near term, the third quarter tends to be the seasonally slowest quarter for our customers especially to those that are most sensitive to the seasonal changes in traffic levels. For the third quarter this year we are expecting revenue in the range of \$193 million to \$198 million. At the midpoint that translates into 21% growth over Q3 of last year.

But this revenue range, which is a bit wider than our typical guidance, we are expecting normalized earnings per diluted share for the third quarter in the range of \$0.39 to \$0.40. We expect gross margins to decline modestly, by less than a point sequentially and EBITDA margins in the range of 46% to 47% for the quarter.

While we have seen a slowdown in growth in media, we believe that the longer term prospects for rich media online remains very attractive and we think we are well positioned to capture that opportunity. In addition, our success in verticals beyond

THOMSON

www.streetevents.com

Contact Us

© 2008 Thomson Financial. Republished with permission. No part of this publication may be reproduced or transmitted in any form or by any means without the prior written consent of Thomson Financial.

FINAL TRANSCRIPT

Jul. 30, 2008 / 4:30PM, AKAM - Q2 2008 Akamai Technologies Inc. Earnings Conference Call

media, as well as with our value-added solutions, help to sustain growth and improve profitability in the first half of the year. And we believe they represent a significant additional growth opportunity going forward.

Given the investments we've made and continue to make in these areas we believe that Akamai is well-positioned to benefit from the long-term trends of business moving online even in a more difficult external environment. Now let me turn the call back over to Paul. Paul?

Paul Sagan - Akamai Technologies Inc. - President, CEO

Thanks, J.D. Clearly the economic climate has changed significantly from where we were even a couple of months ago.

But as our second quarter results demonstrate, we believe we are well positioned (inaudible) and the diversity of our enterprise-class customer base and our broad portfolio of value-added solutions. J.D. mentioned that growth in our media and entertainment vertical has moderated a bit from prior years and I would like to focus a bit more detail on what we're seeing there.

It's not that this market is less promising. The explosion in traffic growth that we saw over the past couple of years has simply moderated, but we remain very excited about the future of media and entertainment online. This is particularly true because the industry is moving toward higher quality video and that is where Akamai can deliver at a scale and quality level that we believe is unmatched.

Many of our conversations with customers in the media go beyond improving the performance and quality of the rich content and extend to how we can help them with their monetization models. We are pleased with the results from our investment in Stream OS because it helps our customers manage and monetize their assets, for example.

Outside of media, we have seen strong growth particularly for some of our newest offerings, such as application acceleration and our Dynamic Site solutions. Innovating in these categories and continually adding enhancements to these newer solutions is not by chance, it's a deliberate strategy to diversify and extend our portfolio and invest our R&D dollars where we believe we will see the best returns and we think that's exactly what's happened.

One example is our commitment to the application space and our recent announcement that we partnered with Citrix to complement the NetScaler product. By teaming a premise-based product like NetScaler with our cloud-based Web Application Accelerator service we are able to bring true end-to-end web application delivery performance to enterprise customers worldwide.

We believe more and more of the market is coming to understand there are inherent issues with Internet performance in the clouds and that our capabilities provide an ideal complement to what customers are trying to do in their own data centers. We're very excited about growth in the area of Web Application Accelerator. We're currently providing these services to hundreds of customers and accelerating many critical business processes.

And these newer services have allowed us to penetrate new verticals such as farm and healthcare where we're helping to accelerate applications used in initiatives like clinical trials. You might have seen a recent study by Net Forecast that highlighted how Akamai can significantly improve the performance of Internet-connected SAP users around the world. The business benefit of this is that enterprisers can extend productivity tools from the consolidated data centers to a global user base.

Another of our value-added services is Dynamic Site Accelerator. This is especially valuable to clients with online commerce sites. In just a year we've more than doubled the number of customers leveraging this capability from Akamai. One customer example is JC Whitney, a large direct marketer of auto parts and accessories.

THOMSON

www.streetevents.com

Contact Us

© 2008 Thomson Financial. Republished with permission. No part of this publication may be reproduced or transmitted in any form or by any means without the prior written consent of Thomson Financial.

FINAL TRANSCRIPT

Jul. 30: 2008 / 4:30PM, AKAM - Q2 2008 Akamai Technologies Inc. Earnings Conference Call

They have leveraged our services to achieve significant improvement in site performance. They have seen an increase of almost 10% in online shopping conversion rates since deploying our solution. So we remain very excited about traction with our value-added offerings and their acceptance out in the market.

While companies are adjusting to the current climate, most are finding they don't want to cut back significantly on their Internet investments and our solutions remain critical to helping them grow their businesses online.

Much of our continued success will come from our ability to help our diverse customer base find ways to drive new revenue online and to help them become more efficient by moving more and more business processes onto the Internet.

Now J.D. and I would be pleased to take your questions. Operator, if you could set the queue and take the first question, please?

QUESTIONS AND ANSWERS

Operator

(OPERATOR INSTRUCTIONS) Your first question comes from the line of Mark Kelleher with Canaccord Adams. Please proceed with your question.

Mark Kelleher - Canaccord Adams - Analyst

Thanks, hi, guys. I was just wondering if you could talk about the competitive environment in the media and entertainment market? What makes you think it's a slowing media and entertainment market and not a competitive situation there?

Paul Sagan - Akamai Technologies Inc. - President, CEO

Well, I think we have always said we are in competitive markets for a decade of history. That has always been a fact of life and it remains a competitive market. I want to be careful that people understand what we're saying, we are not saying that the media and entertainment market is slowing online. What we're saying is that traffic growth on many of these sites, the rate of the growth is not the pace we saw a couple of years ago.

And I think that there's not there are fewer users. But we've seen is we got to broadband adoption particularly in the U.S. and that drove, not just the number of users, but how much each user was consuming. What we're seeing now is that users continue to do more and more, but the pace at which they can consume it is effectively fixed by the amount of broadband they have.

As the pipes get bigger, people can consume more things like rich media, video, et cetera, and we believe we will see adoption all the way up to HD where Internet video is effectively competitive with traditional video to the home today over cable or satellite or whatever means people are using. So what we are seeing isn't a slowing in that market at all.

We continue to believe that our win rates are good, that we have great relationships with most of the major players not just here but internationally in the media space. We benefit as they grow, but what we're seeing is that they are just not seeing the pace of growth of traffic that they had experienced, say on average, a couple of years ago.

The competitive environment remains and we face that all the time. It's why we focus on monetization tools, software tools that differentiate us, higher quality and scale. But what we are seeing is the rate at which an average site is growing in the media space doesn't appear to be today what it was, say, 18 months ago.

THOMSON	www.streetevents.com	Contact Us
---------	----------------------	------------

© 2008 Thomson Financial. Republished with permission. No part of this publication may be reproduced or transmitted in any form or by any means without the prior written consent of Thomson Financial.

FINAL TRANSCRIPT

Jul. 30, 2008 / 4:30PM, AKAM - Q2 2008 Akamai Technologies Inc. Earnings Conference Call

Mark Kelleher - Canaccord Adams - Analyst

Okay, and just lastly could you give a quick number on the bursting? Was that around 30% again?

Paul Sagan - Akamai Technologies Inc. - President, CEO

Bursting was on the low side this quarter. You know, we are sort of got us to where we are on the low end of our guidance. The other point I'd make on bursting, particularly in the media space, we've seen our customers rather than make the traditional period commitments in terms of a monthly commitment they are making longer term commitments, say an annual commitment or a quarterly commitment.

It allows them to balance their usage patterns better with their business, but it also does put a little bit more sensitivity in our business into usage. In some sense, particularly in the media space, usage is growing in importance. And the 70/30 guideline, at least in the media space, is becoming a little less of a guideline.

Mark Kelleher - Canaccord Adams - Analyst

Okay. Thanks.

J.D. Sherman - Akamai Technologies Inc. - CFO

Operator?.

Operator

Your next question comes from the line of Michael Turits of Raymond James. Please proceed with your question.

Paul Sagan - Akamai Technologies Inc. - President, CEO

Hi, Michael.

Michael Turits - Raymond James & Associates - Analyst

Let me ask a couple questions. First of all, you said that because of macro you are bringing down the numbers and you think it's more of a traffic issue. Another questioner asked about competitive. But you said, I think, didn't change.

Has there been any effect on pricing? Is pricing any worse than it has been? And, second, why are you guiding down on margins sequentially if revenue is about the same? And if you can drill into the gross adds and churn which have kind of gone in a different direction than they have sequentially. Why are you adding a lot less -- excuse me adding a lot more gross but still churning a lot?

Paul Sagan - Akamai Technologies Inc. - President, CEO

Okay, Michael, I think we got all three parts of the question. You're breaking up a little. As they say on drive time radio we will answer that offline for you. But I think we got all three points and I think J.D. can take them.

THOMSON

www.streetevents.com

Contact Us

© 2008 Thomson Financial. Republished with permission. No part of this publication may be reproduced or transmitted in any form or by any means without the prior written consent of Thomson Financial.

FINAL TRANSCRIPT

Jul. 30. 2008 / 4:30PM, AKAM - Q2 2008 Akamai Technologies Inc. Earnings Conference Call

J.D. Sherman - Akamai Technologies Inc. - CFO

Yes, okay. Let me start with the pricing. I think, Michael, the pricing, environment has been, as we've talked about, pretty competitive for quite some time. And I don't see any major changes in that.

We got to the point, particularly in the media space, several quarters ago where there is not a major deal out there where there is not a competitive commodity benchmark in terms of this price. I think we expect that to continue for a long time. I don't see any difference there.

The one difference, as Paul pointed out, we don't see that natural growth in traffic at the same level as we saw with the broadband explosion. I think the second question was on margins on a quarter-over-quarter basis. We will see a modest decline in margins even with revenue roughly flat because depreciation is going to grow quarter-over-quarter as we continue to add CapEx.

That is a major feature of that. And also we continue to grow just the head count to manage a larger and larger network. But I think overall we have seen the trend moderate just as we thought we would as the business started to transition and shift towards more value-added services. And what was the third part of the question?

Paul Sagan - Akamai Technologies Inc. - President, CEO

The churn question.

J.D. Sherman - Akamai Technologies Inc. - CFO

Yes, the churn. I think 170 new adds was sort of consistent with the rate we had been at before the prior couple of quarters which maybe were a little bit lower in the 140 to 150. So I don't think there is a major difference there.

We were really pleased with the new adds, particularly given that a lot of the new adds are at larger ARPU levels and are buying our advanced, our value-added services. The churn continues to be around 4% and as I said that continues to be from smaller customers where we really have turned our focus more towards the enterprise-class customers. So I think we felt pretty good about the customer dynamic this quarter.

Michael Turits - Raymond James & Associates - Analyst

(multiple speakers)

Paul Sagan - Akamai Technologies Inc. - President, CEO

The margin performance was extremely strong and I think goes to the value that we are getting in accounts, particularly in enterprises. Operator, next question, please, thank you.

Michael Turits - Raymond James & Associates - Analyst

Thanks.

Operator

Your next question comes from the line of Mark Mahaney with Citigroup. Please proceed with your question.

THOMSON

www.streetevents.com

Contact Us

© 2008 Thomson Financial. Republished with permission. No part of this publication may be reproduced or transmitted in any form or by any means without the prior written consent of Thomson Financial.

FINAL TRANSCRIPT

Jul. 30. 2008 / 4:30PM, AKAM - Q2 2008 Akamai Technologies Inc. Earnings Conference Call

Mark Mahaney - Citigroup - Analyst

Thank you. Can you talk about the quality of those customer adds you had in the quarter? Any since of where they come from? Were they greenfield new to the CDN industry, did they come from other companies? And could you just go over and clarify exactly how the economic weakening macroenvironment impacts your business? Do you see it more in terms of an inability to get pricing? Is it really traffic from end consumers that is falling off? How exactly does a recession impact your business? Thank you.

Paul Sagan - Akamai Technologies Inc. - President, CEO

The quality of the adds has been very good worldwide. And we are really focused on quality enterprise customers and that is who we are targeting for our growth and for the value-added services because it's e-commerce sites, it's the business-to-business portals, it's the mission critical business processes that are going online along with the media and entertainment sites that we are targeting.

And we are looking for large enterprises who can grow and build the volumes in our customer base both of absorbing new product as well as traffic growth. We are very pleased with the quality of the pipeline and the work that the sales staff did, really in every region around the world, particularly in international which has been really strong and that is no surprise given the general economic news of the U.S. economy being weaker and the international and Asia being much stronger.

I have been to Asia once and Europe twice in the last few months and it validates what we are hearing. And I have seen that first hand and heard that. We shouldn't mix up the economic factors and traffic. I don't think that consumers are hurting in the pocketbook or in the mortgage market or something and, therefore, are not consuming as much.

The consumption issue is really a question of how much can people consume. If they are going to be online for an hour a day and they are going to consume video and they don't have high def and they can only do it at cable modem speed that limits how much traffic growth. So what you'll see is not that the same hour month-over-month is more data, it's if they go from an hour to an hour and 15 minutes that the growth is there.

But the amount they can consume in an hour, or if you will, 10 minutes of experience can't grow if the band width doesn't grow. So what we're seeing is really a leveling out of the last mile bandwidth. But that has nothing really to do with the economic situation. I wasn't trying to imply that people were not upgrading their connectivity because of the economy. It's not that at all.

The economic issue is really either verticals that we sell into where people are feeling strong pressure in the economy, manufacturing, automotive and they may be slowing down purchases or being much more sensitive to how much they buy or if they start a new project how many features they add online.

In the media space where the economy does have some effect is in the pressure on advertising, both online advertising, but in particularly, offline advertising and where the media companies are really feeling squeezed they have fewer dollars to invest in new online initiatives that might drive people to drive people to consume more right now and there is not one single event there.

We think taken as a whole it is creating a little more headwind at the middle part of the year and it has made us be a little more conservative about the back half of '08. But it doesn't in any way dampen our enthusiasm about the core business or that really every industry is going more and more to put their process online, but in some cases they have slowed down some of the pace of that rollout.

THOMSON

www.streetevents.com

Contact Us

2

© 2008 Thomson Financial. Republished with permission. No part of this publication may be reproduced or transmitted in any form or by any means without the prior written consent of Thomson Financial.

FINAL TRANSCRIPT

Jul. 30. 2008 / 4:30PM; AKAM - Q2 2008 Akamai Technologies Inc. Earnings Conference Call

Mark Mahaney - Citigroup - Analyst

Thank you, Paul. That is very helpful.

Paul Sagan - Akamai Technologies Inc. - President, CEO

Thanks, Mark. Next?

Operator

Your next question comes from the line of Tom Watts with Cowen & Company. Please proceed with your question.

Thomas Watts - Cowen & Co. - Analyst

Thanks for the clarification between the effects of the economy and the broadband usage. If the economy were to recover, what would be the areas you think would pick up? Is that going to be attraction of new customers or a trade up to additional applications? And then, secondly, if you could comment on the cash flow.

Clearly, you are starting to establish a very attractive free cash flow profile. Are there any, other than starting to pay cash taxes, is there anything in the future that could interrupt those free cash flow trends such as a major CapEx investment or something else?

Paul Sagan - Akamai Technologies Inc. - President, CEO

I'm I'll take the first part. The general economic issue really is vertical specific for us. Commerce, how much people are driving more efforts online. Particularly B to B, not B to C, there's a lot of growth there, but more B to B initiatives, automotive is really a hammered sector which was trying to make a lot of changes to the digital world.

Those are the kinds of things where anecdotally some of the regions are starting to see longer sales cycles and people being a little more conservative about rolling out projects. We don't see them being canceled wholesale. To us this is not a stoppage in growth, but we are being a little more conservative about the pace at which these things are coming online and we wanting to make sure we have our expectations set correctly.

If there was a shorter impact on the economy overall we would see the pickup in those sectors. One would presume it would impact the broader ad market, and that would drive more spending by the media companies. And a lot of that could be spending in their traditional non-online initiatives, revenue in them allowing them to invest more online.

They are doing more online. The question is the pace at which they feel they can afford to go there. And I will let J.D. talk about the cash flow. But I will make the comment there is no -- and Tom, you have known us for 10 years nearly. We don't have a single upgrade event in our CapEx or network model that would necessitate some major change in

J.D. Sherman - Akamai Technologies Inc. - CFO

Right. That is pretty much what I was going to say, Paul. We talked about our long-term model at our last analyst day. And as Paul said we don't have a step function or need a step function the way we build out our network. We think it's a nice incremental investment. We think we spend CapEx in the range of 13% to 16% of our revenue.

THOMSON

www.streetevents.com

Contact Us

16

© 2008 Thomson Financial. Republished with permission. No part of this publication may be reproduced or transmitted in any form or by any means without the prior written consent of Thomson Financial.

FINAL TRANSCRIPT

Jul. 30. 2008 / 4:30PM, AKAM - Q2 2008 Akamai Technologies Inc. Earnings Conference Call

And you can see as our performance over the last few years the model really scales nicely when you look at it on a cash flow basis. And I don't see any major, significant event changing that in the near term.

Thomas Watts - Cowen & Co. - Analyst

Okay. Thanks.

Operator

Your next question comes from the line of Rob Sanderson with American Technology Research. Please proceed with your question.

Rob Sanderson - American Technology Research - Analyst

Thank you. Good afternoon, gentleman.

Paul Sagan - Akamai Technologies Inc. - President, CEO

Hi, Rob.

Rob Sanderson - American Technology Research - Analyst

Hi. I had a couple of questions. First, on the media and entertainment vertical do you think there is a rationalization of that monetization model going on there? We have heard about the video portals missing their expected add revenues and social networks coming in a little bit light as well.

Do you think there is some sort of a bigger trend there with bit more of a rationalization of the business model and a little bit of slowdown on that? And then I have a follow-up.

Paul Sagan - Akamai Technologies Inc. - President, CEO

We are seeing one of the areas where traffic is growing strongly is in some of the social networking categories. So it's always dangerous to over generalize. You have heard me say, I think, quarter-over-quarter for a year now that I thought there were some of those models that were more suspect than others and that there would be a rationalization of that market.

So that may be a piece of what's going on. I'm not sure it ties directly to what we have seen affecting the traffic growth. In fact, I'm not sure that it does. Some of those sites report crazy levels of traffic with no means of supporting it. And their business models, particularly if tougher times come economically will get rationalized, it probably means that there seed funding would dry up or some such thing.

But I think that may be going on, but I don't think that is what we are seeing in terms of general traffic. Most of it is across the board of, I think, just the limitation on broadband consumption has just, again, dampened the pace of growth.

I think it's very important here that all we're talking about here is the slope of the curve up. We're not talking about less time online or less consumption, but it's just the rate of that growth, we think, has moderated a bit more than we expected or modeled.

THOMSON

www.streetevents.com

Contact Us

© 2008 Thomson Financial. Republished with permission. No part of this publication may be reproduced or transmitted in any form or by any means without the prior written consent of Thomson Financial.

FINAL TRANSCRIPT

Jul. 30. 2008 / 4:30PM; AKAM - Q2 2008 Akamai Technologies Inc. Earnings Conference Call

J.D. Sherman - Akamai Technologies Inc. - CFO

And I would just add to Paul's point earlier there is definitely an imperative from these businesses and sites to improve their monetization which is why some of the discussions we have with our customers around how to better and more effectively monetize their websites, that is really something we are seeing heating up.

Rob Sanderson - American Technology Research - Analyst

That makes sense.

Paul Sagan - Akamai Technologies Inc. - President, CEO

Do you have a follow-up, Rob?

Rob Sanderson - American Technology Research - Analyst

Yes, I did. Just more of a macro level. You guys are in a unique position seeing so much of the world's Internet traffic. And I know you spend a lot of time looking at traffic trends, any notable clues there that could help us figure out the macroeconomic climate, if it's strength or weakness in certain industry verticals or anything notable that jumps out from the global traffic trends you monitor?

Paul Sagan - Akamai Technologies Inc. - President, CEO

Yes, traffic trends in commerce are very, very strong. And that continues. And I think that is a number of things. One, there was a trend of people doing more and more shopping online and they're doing more media online just not at the same pace. And some of macro things may be influencing it.

We've all read high gas prices. People are not going to the mall as much so they still need to do some of their shopping, they're doing it online. So we're seeing strong trends there in traffic. So that is one of the things we could peek out, one of the things that gives us confidence about the e-commerce sector for the rest of the year, one of the verticals that is very important to the services that we provide or we think those services are important to that vertical.

And we continue to see very strong or stronger growth internationally which is not a new trend. We've talked about that. But we don't see any impairment there. Also we should be cautious about trying to read too much into traffic trends and correlate it.

People are using the Internet more and more even if they are in more uncertain economic terms. I don't think anyone has talked about people disconnecting their Internet connection because they cannot pay their bill. People will be using the Internet more. Maybe we'll even see them use more if they default away from taking vacations or things like that.

But really difficult to draw any kind of specific conclusion like that or to look into the data and understand it. At the more macro level, I think, it's strong e-commerce, continuing growth in business-to-business usage of online applications. People maybe being a little more cautious about how fast they are investing in new online B to B initiatives. Again, all of these things are growing, it's just a question of

THOMSON

www.streetevents.com

Contact Us

12

© 2008 Thomson Financial. Republished with permission. No part of this publication may be reproduced or transmitted in any form or by any means without the prior written consent of Thomson Financial.

FINAL TRANSCRIPT

Jul. 30. 2008 / 4:30PM, AKAM - Q2 2008 Akamai Technologies Inc. Earnings Conference Call

Rob Sanderson - American Technology Research - Analyst

Thank you very much much.

Paul Sagan - Akamai Technologies Inc. - President, CEO

Thanks, Rob.

Operator

Your next question comes from the line of Tim Klasell with Thomas Weisel Partners. Please proceed with your question.

Tim Klasell - Thomas Weisel Partners - Analyst

Good afternoon, everybody. You mentioned the commerce site is growing at 50% year-over-year. I know you only do this once a year, but could you give us some color around the media and entertainment space? What is the growth profile there?

Paul Sagan - Akamai Technologies Inc. - President, CEO

That is about 40% to 45% of our business. And as I said on the call, it grew roughly in line, Tim, with our overall growth rate of 27%. Slightly below that, but roughly in line.

Tim Klasell - Thomas Weisel Partners - Analyst

Okay. And your guidance going forward what do you assume for bursting around the media and entertainment?

Paul Sagan - Akamai Technologies Inc. - President, CEO

Again, as I said to an earlier question, a lot of what is happening in media and entertainment we are seeing longer term volume commitments rather than a standard monthly deal. What that means is for our customers they realize their usage is more seasonal, particularly in the volume driven parts of the business.

And so what this allows them to do is balance their commitment over a longer period. What it means for us is we are a bit more susceptible to seasonality. We saw it last year in our Q3 and Q4 dynamics. We had a very strong Q4 last year.

Just natural seasonality, particularly in the media and entertainment space as people go outside for the summer. And the new programs come online and the holiday season drives online advertising, et cetera. We see more of that.

I would say outside of that area, the bursting relationship stays the same. But that dynamic is changing a bit, the dynamic of our overall seasonality.

Tim Klasell - Thomas Weisel Partners - Analyst

Okay, great, thank you very much.

THOMSON

www.streetevents.com

Contact Us

© 2008 Thomson Financial. Republished with permission. No part of this publication may be reproduced or transmitted in any form or by any means without the prior written consent of Thomson Financial.

FINAL TRANSCRIPT

Jul. 30. 2008 / 4:30PM, AKAM - Q2 2008 Akamai Technologies Inc. Earnings Conference Call

Paul Sagan - Akamai Technologies Inc. - President, CEO

Thanks, Tim.

Operator

Your next question comes from line of Colby Synesael with Merriman. Please proceed with your question.

Colby Synesael - Merriman Curhan Ford & Co. - Analyst

Great. Thanks for taking my question. Just looking at your international revenues it looks like you have 26% of revenues which is up nicely from last year. Is there an opportunity for you guys to accelerate your growth in the international space?

Obviously, you mentioned the U.S. as being one of the areas of weakness. Maybe international could balance that out a little bit. And if you could talk about the competitive dynamics internationally verse domestic if there's any nuances there that changes how you guys compete? Thanks.

Paul Sagan - Akamai Technologies Inc. - President, CEO

We have been really pleased with international performance over the last year, not just this year. And you have seen that in the steady increase. And given that the domestic business has grown very strongly means international has really been executing well to not just stay current but to catch up. Obviously, for 26% of the business to counter balance 74% they have to be really outstanding. We are seeing some of that.

And we are making investment in the international, we're opening new offices and expanding the staff in most of the regions. We continue to see new opportunities. As you may be aware, our habit is to move into a region first, if you will, by parachuting in, meaning we fly people in and out of one of the other capitals where we operate offices and if we get enough traction we will open offices in new cities or new countries.

We are opening several, or already have this year in Europe and Asia and are very pleased with that performance. And I think that is an area where we will buy some incremental investment. The opportunity is strong and you're seeing the payoff. Frankly, there are just more Internet users outside the U.S. than there are inside.

And in many countries they have broadband already that exceeds ours. If you look at Korea, just came back from Europe. France now has 20 megabit a second service available to homes at very competitive rates and they are seeing uptake there that I think exceeds what we are seeing, way exceeds what we're seeing in the U.S.

Some of those markets have for all verticals, including media and entertainment, more growth opportunity than they have, than we are seeing here even so far. And in no way are we discouraged about the U.S. market, but there are just really interesting Internet things going on internationally.

And you're right to ask the question about competition. We see some of the names you would recognize as U.S. competitors in some of the international markets. We deal with that kind of competition in some areas and in some countries there are domestic, local competitors. Some are -- try to sell a content delivery service similar to ours, others might try to mix in production or some kind of professional services as a local differentiator.

I think we compete effectively. One of the things that we have that really differentiates us is global scale, and we are generally targeting enterprises with global operations or global suppliers. And in this world economy, almost any decent-sized company

THOMSON

www.streetevents.com

Contact Us

14

© 2008 Thomson Financial. Republished with permission. No part of this publication may be reproduced or transmitted in any form or by any means without the prior written consent of Thomson Financial.

FINAL TRANSCRIPT

Jul. 30. 2008 / 4:30PM; AKAM - Q2 2008 Akamai Technologies Inc. Earnings Conference Call

today is dealing with suppliers, partners, marketers in distributed geographies and they are looking for WAN-like performance for global Web operations and we can offer that and we think that most of the competition internationally can't do that at all.

It really helps us there. In other ways it is kind of similar. We look at channel partners, developing local extensions of sales operations as well. Some of those are a bit more regionalized as we go.

J.D. Sherman - Akamai Technologies Inc. - CFO

The other thing I would add to that. The investment that we need to make and we are making to grow internationally is a go-to-market investment. It doesn't require a new level of buildout on our network. We already have the massively distributed global footprint and that is a significant advantage.

Colby Synesael - Merriman Curhan Ford & Co. - Analyst

Great, thank you.

Paul Sagan - Akamai Technologies Inc. - President, CEO

Operator?

Operator

Your next question comes from the line of Rod Ratliff with the Stanford Group. Please proceed with your question.

Paul Sagan - Akamai Technologies Inc. - President, CEO

Hi, Rod.

Rod Ratliff - Stanford Group Co. - Analyst

Hey, guys. Obviously, nice expansion in the gross margin there. Is that just the greater presence in the mix of higher margin verticals?

Paul Sagan - Akamai Technologies Inc. - President, CEO

I think that is certainly the major driver of that. It's something that we talked about for a while that as we get more and more penetration of our value-added services we start to see that benefit.

We also even in a -- forgive my term -- in a more basic delivery deal we still command a significant premium just based on our fundamental performance advantage and reliability. But I would say it has been our strategy to upsell our customers with value-added services and build out on our differentiation and we're starting to see some of the benefit of that.

Rod Ratliff - Stanford Group Co. - Analyst

All right. Two very quick ones. What are you seeing in online casual gaming? Video gaming?

THOMSON

www.streetevents.com

Contact Us

© 2008 Thomson Financial. Republished with permission. No part of this publication may be reproduced or transmitted in any form or by any means without the prior written consent of Thomson Financial.

FINAL TRANSCRIPT

Jul. 30. 2008 / 4:30PM, AKAM - Q2 2008 Akamai Technologies Inc. Earnings Conference Call

Paul Sagan - Akamai Technologies Inc. - President, CEO

A large growth in the gaming space. That has been a very strong area for us for probably about 18 months. And as we see more connected devices that will grow.

Rod Ratliff - Stanford Group Co. - Analyst

And I was -- there was a press release out, I believe, yesterday that listed NBC's partners for streaming the Olympics. Do you think you guys will you see any notable benefit from that at all?

Paul Sagan - Akamai Technologies Inc. - President, CEO

We are looking forward to the summer games and the role we are playing there across the globe. I can touch on a number of them. We are working for the first time with partners inside China to support their efforts to distribute the games on the Web which is quite interesting.

We are working with the EBU to deliver the Olympics across the European continent. We'll also going to be delivering the summer games throughout the U.K with a partnership there. And domestically we are really excited to be working once again with our partners at NBC-Universal to deliver the NBCOlympics.com site. We think it should be a very sizable Olympics.

As we've said, there is no one single event or customer who at our scale is that significant to the quarter. At the same time, we are happy to have all that business and to work on a global event, which we think will be interesting. You never know how exciting it will be until we see how good the individual games are and whether people capture someone's attention.

And the time zone differences. Also we're going to have to see how that plays and it will be regionally different where the games are live or not how significant the Internet is.

We've been doing the summer games every four years and we get some version every two years because of the winter games as well. It always has been an interesting traffic driver on our network and we're looking forward to it, but, again, on our scale we don't think any one thing is so significant. But we'll be involved in the Olympics in almost every geography in the world including here with NBC.

Rod Ratliff - Stanford Group Co. - Analyst

Can I throw out a follow-up, Paul?

Paul Sagan - Akamai Technologies Inc. - President, CEO

Sure.

Rod Ratliff - Stanford Group Co. - Analyst

How do you feel about gaining a foothold in China?

FINAL TRANSCRIPT

Jul. 30. 2008 / 4:30PM, AKAM - Q2 2008 Akamai Technologies Inc. Earnings Conference Call

Paul Sagan - Akamai Technologies Inc. - President, CEO

As everybody says, particularly in tech, actually in any industry. It's a hugely exciting and intriguing market because of its scale. In many ways it's a very different place to operate because of the state of development, regulation, et cetera. We have worked there with partners successfully and we are very pleased about it to deliver content into China on behalf of some of our customers.

And we look forward to working with our partners there to expand our ability to really make the Internet in China achieve all of its potential. And we think that that presents a growth opportunity for us, as well, over the next couple of years. We think our technology and services can help benefit Internet performance there as they do everywhere else in the world.

Rod Ratliff - Stanford Group Co. - Analyst

Thanks a lot.

Operator

Your next question comes from the line of Srinivas Anantha with Oppenheimer. Please proceed with your question.

Srinivas Anantha - Oppenheimer & Co. - Analyst

Yes, thank you. Couple of questions. One of the things you guys highlight is the newer value-added solutions such as app services and Dynamic Site solutions that helps differentiate in the marketplace.

Could you guys quantify what percentage of revenue comes from these services and how much they have been growing year-over-year?

Paul Sagan - Akamai Technologies Inc. - President, CEO

We talked about that at our analyst day last year. We said at that point it was about 30% of our revenue came from customers using our Dynamic Solutions including those and that continues to grow. We haven't quantified that number externally since then. Probably will give an update later in the year as we have an analyst day this year. But that number continues to grow as a portion of our business. And that's a major strategic thrust for us.

Srinivas Anantha - Oppenheimer & Co. - Analyst

And, Paul, you talked about the overall slowdown in traffic. Do you see any killer applications whether on the enterprise side, on the consumer side you think will reaccelerate the growth in IP traffic?

Paul Sagan - Akamai Technologies Inc. - President, CEO

There is no slowdown in traffic. What I said was and I just want to be very clear everybody gets this, a slower rate of growth in some of the media sites. There is no slowdown in traffic, it's really a growth rate question in some verticals. There is no slowdown in Internet traffic or Internet usage. I don't think it's a question of killer apps.

I think for media it's a question of last mile bandwidth accessibility and the ability to consume data or the rate at which people can consume it. And in the reality in the U.S. you are lucky to get a television quality video picture over IP and all your neighbors better not be trying to share that same link to do that. We are looking forward to the day when you can do true HD to any home over IP.

THOMSON

www.streetevents.com

Contact Us

17

© 2008 Thomson Financial. Republished with permission. No part of this publication may be reproduced or transmitted in any form or by any means without the prior written consent of Thomson Financial.

FINAL TRANSCRIPT

Jul. 30, 2008 / 4:30PM; AKAM - Q2-2008 Akamai Technologies Inc. Earnings Conference Call

And if you looked at our HD Web demonstration site and you have the right last mile connectivity, probably more likely at work than at home today, you can watch a live stream of a fully competitive, if you will, HD picture. It will be as good on your big screen TV as your HD standard TV signal. If you will, I think that is the killer app. It's not that the content needs to be existent in HD, it exists. The last mile and then the monetization models that go with it are what we're needing to reaccelerate the growth rate there.

And on the business side, we are seeing those apps and we're seeing the adoption. That's why you see the strong uptake of those services and the reason, I think, the gross margin was so strong. And there some of the applications are B to B portals. Many of the buying, provisioning and data-based apps that people tend to do behind the firewall and let someone access over a phone or a call center that are now being opened up on a secure portal. Those apps exist and the question there is the pace at which enterprises are putting a Web front end on a legacy system and saying to people, effectively, self-service. I think the apps exist there, but it's the question of the shift in the way the businesses are operating and that reengineering that we have been seeing over the last couple years and have driven the strong growth in our B to B services.

Srinivas Anantha - *Oppenheimer & Co. - Analyst*

Thanks for the clarification. And, J.D., one quick clarification on the expenses. I know you mentioned that gross margins are going to decline by a percentage or so. Are you talking about cash gross margins or GAAP gross margins? And the second one is the G&A declined quite a bit at least relative to your expectations in this quarter sequentially. Were there any one-time events that helped that? Thanks a lot.

J.D. Sherman - *Akamai Technologies Inc. - CFO*

Our G&A was actually up about \$1 million quarter-over-quarter. And maybe that was a bit lower than we expected to spend. But I think you just have timing and managing how we have our expenses come in. In general, though, our expenses are largely resource-related and we did continue to add resources.

On GAAP gross margins -- I should mention that our litigation costs went down slightly quarter-over-quarter from 1Q to 2Q offsetting some of the increases that we had. On gross margin, I think both cash and GAAP gross margins will decline somewhere in less than a point range.

Srinivas Anantha - *Oppenheimer & Co. - Analyst*

Yes, thanks a lot.

Paul Sagan - *Akamai Technologies Inc. - President, CEO*

Operator? I think we have time for a couple more questions if people keep them short.

Operator

Your next question comes from the line of Garrett Becker with Merrill Lynch. Please proceed with your question.

Garrett Becker - *Merrill Lynch - Analyst*

I was wondering if you could talk about some of the new customers you added this quarter? Were any of those international?

THOMSON

www.streetevents.com

Contact Us

© 2008 Thomson Financial. Republished with permission. No part of this publication may be reproduced or transmitted in any form or by any means without the prior written consent of Thomson Financial.

FINAL TRANSCRIPT

Jul. 30: 2008 / 4:30PM, AKAM - Q2 2008 Akamai Technologies Inc. Earnings Conference Call

Paul Sagan - Akamai Technologies Inc. - President, CEO

Yes, all across the board in every region. We had very strong performance with enterprise, new customers in Europe, where I just came back from recently, Asia as well. And the U.S. We had strong adds and, as J.D. mentioned, the ones we churned tended to be much smaller than the customers we bring on, which really is that process of getting better and better at managing the pipeline, of bringing in good customers and rolling off those that, for whatever reason, don't really make sense and tend to be small.

J.D. Sherman - Akamai Technologies Inc. - CFO

I don't know if I can mention any of the names, but one thing that was very encouraging to me was to see that a good portion of the larger deals that came in were APS and DSA deals, some really high value-add service and relatively large deals coming in the door for a first time customer.

Paul Sagan - Akamai Technologies Inc. - President, CEO

On the B to B side.

J.D. Sherman - Akamai Technologies Inc. - CFO

Right.

Garrett Becker - Merrill Lynch - Analyst

Okay. And then, maybe I misheard the previous question with respect to Dynamic Site Solutions. Can you give us any color on the Application Performance solutions? Obviously, it ticked up and it helped your margins. I think the last time you said it was about a \$40 million run rate the last time you gave us any numbers. So any other color would be helpful.

Paul Sagan - Akamai Technologies Inc. - President, CEO

We update that once a year. At this point we're not doing segment reporting quarter-by-quarter. But we were very pleased with what we're seeing in not just Dynamic Sites, but Application Performance as well. And some of the deals that J.D. was referencing, domestic and international, those enterprise deals were for Application Acceleration and some were for for Dynamic Site Acceleration.

Garrett Becker - Merrill Lynch - Analyst

And if I can sneak on one other.

Paul Sagan - Akamai Technologies Inc. - President, CEO

Keep it short, now.

Garrett Becker - Merrill Lynch - Analyst

Short? Any thoughts about buybacks?

THOMSON

www.streetevents.com

Contact Us

10

© 2008 Thomson Financial. Republished with permission. No part of this publication may be reproduced or transmitted in any form or by any means without the prior written consent of Thomson Financial.

FINAL TRANSCRIPT

Jul. 30. 2008 / 4:30PM, AKAM - Q2 2008 Akamai Technologies Inc. Earnings Conference Call

Paul Sagan - Akamai Technologies Inc. - President, CEO

No, we're not going to speculate on things in the future. Obviously, we meet with our board on a regular basis, look at our balance sheet and think about all the opportunities for investment and tend to be opportunistic and we'll make the right moves at the right time when we see them. But we won't speculate on might do this or might do that.

Garrett Becker - Merrill Lynch - Analyst

Great, okay, thanks.

Paul Sagan - Akamai Technologies Inc. - President, CEO

Thanks.

Operator

Your next question comes from the line of Kirk Materne with Banc of America. Please proceed with your question.

Kirk Materne - Banc of America Securities - Analyst

Yes, thanks very much. Just a little bit more color on the APS side. Can you guys talk a little bit about where most of the customers that were added this quarter, I guess, historical customers of yours, were they brand new customers? I'm just trying to get a sense on where some of the demand is coming from on that side?

J.D. Sherman - Akamai Technologies Inc. - CFO

I think you mean --

Kirk Materne - Banc of America Securities - Analyst

I guess what percentage were existing Akamai customers versus brand or greenfield opportunities for you?

J.D. Sherman - Akamai Technologies Inc. - CFO

Honestly, I don't know the answer off the top of my head. What we have been seeing is roughly a half and half type ratio.

One of the things about APS is that it has been an entree for us into markets where we didn't have a presence like pharma and manufacturing and some of the places where Web content delivery is less important. So we've added great penetration in there. But also we, even our biggest media customers have online applications so we are getting some penetration in there. So I apologize I don't have the stat for the number of things this quarter off the top of my head, but the rough ratio has been 50/50.

Kirk Materne - Banc of America Securities - Analyst

Just a follow-up on that point, J.D. When you are talking about some of your big media customers taking on the APS services, it's a different part of their business. Do they have money to spend on IT or is it pushing more content out, they are taking a

THOMSON

www.streetevents.com

Contact Us

36

© 2008 Thomson Financial. Republished with permission. No part of this publication may be reproduced or transmitted in any form or by any means without the prior written consent of Thomson Financial.

FINAL TRANSCRIPT

Jul. 30. 2008 / 4:30PM, AKAM - Q2 2008 Akamai Technologies Inc. Earnings Conference Call

pause on that side? Is it just – is it more of a monetization issue for them on that side, I mean if they have money to spend on APS they have money, but is it a matter of where they are focusing their spend right now?

J.D. Sherman - Akamai Technologies Inc. - CFO

The great thing about APS, and, obviously, it's something we sell into these guys, not only does it boost productivity but it also drives cost savings. In an environment like this and as you would expect and as you've seen probably, anecdotally, IT budgets get scrutinized a little bit more closely.

So there is a sales challenge there. But fundamentally what our Application Performance Solutions do, also saves companies money in their data centers, as well. So that's a real powerful story, particularly in this type of environment.

And then – when you talk about DSA, particularly in the commerce area, the great thing about that is the benefits aren't in terms of an investment to make your site nicer or something like that, it's very easily translatable to the top line improvement. And in an environment like this that's something that people find very valuable.

Paul Sagan - Akamai Technologies Inc. - President, CEO

Operator, why don't we take one more question and we'll make sure we're off in the hour we promised everybody.

Operator

Your final question comes from the line of Derek Bingham with Goldman Sachs. Please proceed with your question.

Derek Bingham - Goldman Sachs - Analyst

Hi, thanks. I wanted to ask kind of what your sense is for your outlook for new customer adds as you continue to churn off more smaller customers? Is that kind of 25 to 50 pace kind of the right way to think about it going forward on a net basis?

J.D. Sherman - Akamai Technologies Inc. - CFO

Derek, we don't really forecast that on a going forward basis. What we do is focus on making sure that the signings that we're delivering and the new customers we're bringing on are high quality customers, and then taking care of the customers that we have and making sure that the ones that are growing with Akamai and we have an opportunity to upsell and improve and deliver value for them that we keep.

But we don't have a forecast going forward on that.

Paul Sagan - Akamai Technologies Inc. - President, CEO

All right. Thank you. Operator, thank you, thank you all for tuning in. We'll be back in three months as usual to update you on the summer and the rest of the year. Thank you.

Operator

Thank you for your participation in today's conference. This concludes the presentation. You may now disconnect.

THOMSON

www.streetevents.com

Contact Us

21

© 2008 Thomson Financial. Republished with permission. No part of this publication may be reproduced or transmitted in any form or by any means without the prior written consent of Thomson Financial.

FINAL TRANSCRIPT

Jul. 30. 2008 / 4:30PM, AKAM - Q2 2008 Akamai Technologies Inc. Earnings Conference Call

DISCLAIMER

Thomson Financial reserves the right to make changes to documents, content, or other information on this web site without obligation to notify any person of such changes.

In the conference calls upon which Event Transcripts are based, companies may make projections or other forward-looking statements regarding a variety of items. Such forward-looking statements are based upon current expectations and involve risks and uncertainties. Actual results may differ materially from those stated in any forward-looking statement based on a number of important factors and risks, which are more specifically identified in the companies' most recent SEC filings. Although the companies may indicate and believe that the assumptions underlying the forward-looking statements are reasonable, any of the assumptions could prove inaccurate or incorrect and, therefore, there can be no assurance that the results contemplated in the forward-looking statements will be realized.

THE INFORMATION CONTAINED IN EVENT TRANSCRIPTS IS A TEXTUAL REPRESENTATION OF THE APPLICABLE COMPANY'S CONFERENCE CALL AND WHILE EFFORTS ARE MADE TO PROVIDE AN ACCURATE TRANSCRIPTION, THERE MAY BE MATERIAL ERRORS, OMISSIONS, OR INACCURACIES IN THE REPORTING OF THE SUBSTANCE OF THE CONFERENCE CALLS. IN NO WAY DOES THOMSON FINANCIAL OR THE APPLICABLE COMPANY ASSUME ANY RESPONSIBILITY FOR ANY INVESTMENT OR OTHER DECISIONS MADE BASED UPON THE INFORMATION PROVIDED ON THIS WEB SITE OR IN ANY EVENT TRANSCRIPT. USERS ARE ADVISED TO REVIEW THE APPLICABLE COMPANY'S CONFERENCE CALL ITSELF AND THE APPLICABLE COMPANY'S SEC FILINGS BEFORE MAKING ANY INVESTMENT OR OTHER DECISIONS.

©2008, Thomson Financial. All Rights Reserved.

THOMSON

www.streetevents.com

Contact Us

22

© 2008 Thomson Financial. Republished with permission. No part of this publication may be reproduced or transmitted in any form or by any means without the prior written consent of Thomson Financial.

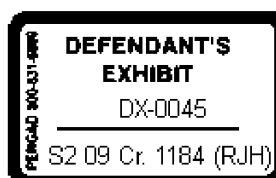
DX-45

Marion Harris

From: Eric Rothdeutsch
Sent: Thursday, February 10, 2005 11:33 PM
To: Tech & Trading Group
Subject: ICST update

I like ICST as a LONG right here for a number of reasons:

- The company appears to be tracking to the high end of its flat to -4% seq. revenue guidance
- Clocks for PCs appear better than expected due to strong Grantsdale orders in January; Q4 orders were worse than expected but now looks like it was due to the timing of the Chinese New Year; last year, orders were placed in Dec, this year in Jan; there should be good growth in Q2 as well due to new platforms ramping
- Sony PS2 appears to not be seeing seasonal weakness as Sony catches up with shortfall last qtr; Xbox also appears slightly better than expected
- Orders from set-top box mfrs appear to have snapped back, likely due to inv correction having run its course
- The big issue that has plagued the stock has been fear of an increasingly competitive environment from MRVL, IDTI, & CY. While MRVL indeed has won a socket or two at Asustek, there's no way that MRVL will do the number of custom designs that ICST has made a business out of; the same goes for IDTI. MRVL & IDTI will simply offer a standard products that will capture a few designs, but cannot do the dozens of custom designs that are required to take much of a bite of ICST's 80% share at white box & 60% share at OEM customers. While each company will take incremental share from ICST, the stock at its 52-week low more than reflects this, in my view. CY is all but walking away from PC clock business because of botched product transitions (too late for Grantsdale).
- The weak relative performance of ICST in 2004 was largely due to the execution problems of INTC where there were essentially no new PC platforms introduced, except for the beginning of a transition to Grantsdale. In 2005, however, there are 5 significant transitions: 2 desktops (Grantsdale/Lakeport), 2 notebooks (Alviso/Calistoga), & server (Lakehurst). Each transition provides a higher ASP and higher margin to ICST. Additionally, the dual-core CPU platforms from INTC will require a higher pin-count package, leading to higher ASP & margin (Smithfield platform, although CY05 volumes will be small).
 Additionally, the company is rapidly gaining traction with its LCD TV & monitor families that no analysts have included in their models that could add \$4m-\$5m to CY05 revs and \$15m-\$20m to CY06 revs. I believe LG Philips is ramping into production now.
- Trading at only 23x CY05 EPS of \$0.81 (or 19x ex-cash), I think there's a compelling trade to the low \$20s as investors realize there's real opp'tys for ICST & potential upside to estimates going forward
- The RISK: the risk is that the company appears to be in an acquisitive mode, although my belief is that there is nothing imminent.



DX-0045-00001
 GOV-00003083

DX-1006

<DOCUMENT>
 <TYPE>13F-HR
 <SEQUENCE>1
 <FILENAME>galq107.txt
 <TEXT>

UNITED STATES
 SECURITIES AND EXCHANGE COMMISSION
 Washington, D.C. 20549

FORM 13F

FORM 13F COVER PAGE

Report for the Calendar Year or Quarter Ended: 3/31/2007

Check here if Amendment []; Amendment Number:
 This amendment (Check only one.): [] is a restatement.
 [] adds new holdings entries.

Institutional Investment Manager Filing this Report:

Name: Galleon Management, L.P.
 Address: 590 Madison Avenue, 34th Floor
 New York, New York 10022

13 File Number: 28-7016

The institutional investment manager filing this report and the person by whom it is signed hereby represent that the person signing the report is authorized to submit it, that all information contained herein is true, correct, and complete, and that it is understood that all required items, statements, schedules, lists, and tables, are considered integral parts of this form

Person Signing this Report on Behalf of Reporting Manager:

Name: George Lau
 Title: Managing Director - Finance
 Phone: 212-829-4034
 Signature, Place and Date of Signing:

George Lau 5/11/2007

Report Type (Check only one.):

[X] 13F HOLDINGS REPORT.
 [] 13F NOTICE.
 [] 13F COMBINATION REPORT.

I AM SIGNING THIS REPORT AS REQUIRED BY THE SECURITIES EXCHANGE ACT OF 1934

<PAGE>

FORM 13F SUMMARY PAGE

Report Summary:

Number of Other Included Managers: 0
 Form 13F Information Table Entry Total: 1322
 Form 13F Information Table Value Total: 9186473

<PAGE>

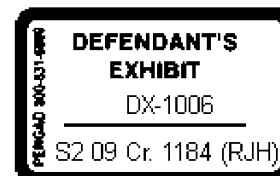
<TABLE> <C>

FORM 13F INFORMATION TABLE

NAME OF ISSUER	TITLE OF CLASS	CUSIP	Value x(\$1000)	SHARES/ PRN AMT	SH/ PUT/ PRN CALL	INVTMT DISCRETN	OTHER VOTING MANAGERSOLE	AUTHORITY SHARED NONE
D 3COM CORP	STOCK	885535104	3903	998109	SH	SOLE	998109	0 0
D 99 CENTS ONLY STORES	STOCK	65440K106	591	40100	SH	SOLE	40100	0 0
D A C MOORE ARTS & CRAFTS INC	STOCK	00086T103	213	10000	SH	SOLE	10000	0 0
D AAR CORP	STOCK	000361105	2205	80000	SH	SOLE	80000	0 0
D ABB LTD	STOCK	000375204	2716	158100	SH	SOLE	158100	0 0
D ABB LTD	CALL	000375904	3092	1800	SH CALL	SOLE	1800	0 0
D ABBOTT LABS	PUT	002824950	2790	500	SH PUT	SOLE	500	0 0
D ABITIBI-CONSOLIDATED INC	STOCK	003924107	4020	1425500	SH	SOLE	1425500	0 0
D ABRAXIS BIOSCIENCE INC	STOCK	00383E106	3205	120000	SH	SOLE	120000	0 0
D ABX AIR INC	STOCK	00080S101	2055	300000	SH	SOLE	300000	0 0
D ACCREDITED HOME LENDRS HLDG	STOCK	00437P107	992	107000	SH	SOLE	107000	0 0
D ACCURAY INC	STOCK	004397105	445	20000	SH	SOLE	20000	0 0
D ACE LTD	STOCK	G0070K103	1204	21093	SH	SOLE	21093	0 0
D ACME PACKET INC	STOCK	004764106	6683	452147	SH	SOLE	452147	0 0
D ACTIONS SEMICONDUCTOR CO LTD	STOCK	00507E107	4101	555000	SH	SOLE	555000	0 0
D ACTIVIDENTITY CORP	STOCK	00506P103	3072	608307	SH	SOLE	608307	0 0
D ACTIVISION INC NEW	STOCK	004930202	11517	608092	SH	SOLE	608092	0 0
D ACTUANT CORP	STOCK	00508X203	16696	328600	SH	SOLE	328600	0 0
D ADAPTEC INC	STOCK	00651F108	4958	1281168	SH	SOLE	1281168	0 0
D ADOBE SYS INC	STOCK	00724F101	7587	181939	SH	SOLE	181939	0 0
D ADTRAN INC	CALL	00738A906	2435	1000	SH CALL	SOLE	1000	0 0

<http://www.sec.gov/Archives/edgar/data/1056829/000105682907000091/galq107.txt>

1/3/2011
 DX-1006-00001
 GOV-00004897



D	ADTRAN INC	STOCK	00738A106	955	39230	SH	SOLE	39230	0	0
D	ADVANCE AUTO PARTS INC	STOCK	00751Y106	10991	285100	SH	SOLE	285100	0	0
D	ADVANCED ANALOGIC TECHNOLOGI	STOCK	00752J108	1513	230000	SH	SOLE	230000	0	0
D	ADVANCED MEDICAL OPTICS INC	CALL	00763M908	2232	600	SH CALL	SOLE	600	0	0
D	ADVANCED MICRO DEVICES INC	CALL	007903907	36435	27898	SH CALL	SOLE	27898	0	0
D	ADVANCED MICRO DEVICES INC	PUT	007903957	784	600	SH PUT	SOLE	600	0	0
D	ADVANCED SEMICONDUCTOR ENGR	STOCK	00756M404	3725	625000	SH	SOLE	625000	0	0
D	AERCAP HOLDINGS NV	STOCK	N00985106	3639	125000	SH	SOLE	125000	0	0
D	AEROFLEX INC	STOCK	007768104	902	68565	SH	SOLE	68565	0	0
D	AETNA INC NEW	STOCK	00817Y108	18611	425000	SH	SOLE	425000	0	0
D	AFFILIATED COMPUTER SERVICES	STOCK	008190100	2862	48600	SH	SOLE	48600	0	0
D	AFFILIATED COMPUTER SERVICES	CALL	008190900	3951	671	SH CALL	SOLE	671	0	0
D	AFFILIATED COMPUTER SERVICES	PUT	008190950	6341	1077	SH PUT	SOLE	1077	0	0
D	AFFYMETRIX INC	STOCK	00826T108	1504	50000	SH	SOLE	50000	0	0
D	AFFYMETRIX INC	CALL	00826T908	6014	2000	SH CALL	SOLE	2000	0	0
D	AGILE SOFTWARE CORP DEL	STOCK	00846X105	5881	846147	SH	SOLE	846147	0	0
D	AIRTRAN HLDGS INC	STOCK	00949P108	5905	575000	SH	SOLE	575000	0	0
D	AK STL HLDG CORP	CALL	001547908	2339	1000	SH CALL	SOLE	1000	0	0
D	AKAMAI TECHNOLOGIES INC	STOCK	00971T101	3994	80010	SH	SOLE	80010	0	0
D	AKORN INC	STOCK	009728106	4446	658606	SH	SOLE	658606	0	0
D	ALADDIN KNOWLEDGE SYS LTD	STOCK	M0392N101	2591	150000	SH	SOLE	150000	0	0
D	ALASKA AIR GROUP INC	STOCK	011659109	529	13882	SH	SOLE	13882	0	0
D	ALCATEL-LUCENT	STOCK	013904305	6391	540681	SH	SOLE	540681	0	0
D	ALCOA INC	STOCK	013817101	12403	365868	SH	SOLE	365868	0	0
D	ALCOA INC	CALL	013817901	6780	2000	SH CALL	SOLE	2000	0	0
D	ALCOA INC	PUT	013817951	3390	1000	SH PUT	SOLE	1000	0	0
D	ALEXION PHARMACEUTICALS INC	CALL	015351909	3459	800	SH CALL	SOLE	800	0	0
D	ALEXION PHARMACEUTICALS INC	STOCK	015351109	259	6000	SH	SOLE	6000	0	0
D	ALICO INC	STOCK	016230104	527	9200	SH	SOLE	9200	0	0
D	ALLETE INC	STOCK	018522300	3552	76200	SH	SOLE	76200	0	0
D	ALLIED WASTE INDS INC	STOCK	019589308	10825	859800	SH	SOLE	859800	0	0
D	ALLSCRIPTS HEALTHCARE SOLUTI	STOCK	019889P108	4815	179600	SH	SOLE	179600	0	0
D	ALLTEL CORP	STOCK	020039103	863	13920	SH	SOLE	13920	0	0
D	ALPHA NATURAL RESOURCES INC	CALL	02076X902	1563	1000	SH CALL	SOLE	1000	0	0
D	ALPHA NATURAL RESOURCES INC	STOCK	02076X102	2738	175200	SH	SOLE	175200	0	0
D	ALTAIR NANOTECHNOLOGIES INC	STOCK	021373105	70	22800	SH	SOLE	22800	0	0
D	ALTRIA GROUP INC	STOCK	02209S103	7191	81898	SH	SOLE	81898	0	0
D	ALVARION LTD	STOCK	M0861T100	3107	385968	SH	SOLE	385968	0	0
D	AMAZON COM INC	PUT	023135956	29166	7330	SH PUT	SOLE	7330	0	0
D	AMDOCS LTD	STOCK	026020103	3205	87850	SH	SOLE	87850	0	0
D	AMERICA MOVIL SAB DE CV	STOCK	02364W105	10322	215980	SH	SOLE	215980	0	0
D	AMERICAN ELEC PWR INC	STOCK	025537101	10238	210000	SH	SOLE	210000	0	0
D	AMERICAN EXPRESS CO	STOCK	025816109	11393	202000	SH	SOLE	202000	0	0
D	AMERICAN FINL RLTY TR	STOCK	02607P305	3038	301400	SH	SOLE	301400	0	0
D	AMERICAN INTL GROUP INC	STOCK	026874107	39836	592616	SH	SOLE	592616	0	0
D	AMERICAN INTL GROUP INC	CALL	026874907	38315	5700	SH CALL	SOLE	5700	0	0
D	AMERICAN ORIENTAL BIOENGR IN	CALL	028731907	1878	2000	SH CALL	SOLE	2000	0	0
D	AMERICAN ORIENTAL BIOENGR IN	STOCK	028731107	887	94500	SH	SOLE	94500	0	0
D	AMERICAN STD COS INC DEL	STOCK	029712106	1060	20000	SH	SOLE	20000	0	0
D	AMERICAN TECHNOLOGY CORP	STOCK	030145205	1986	499100	SH	SOLE	499100	0	0
D	AMERICAN TOWER CORP	STOCK	029912201	1079	27700	SH	SOLE	27700	0	0
D	AMERICREDIT CORP	PUT	03060R951	3429	1500	SH PUT	SOLE	1500	0	0
D	AMERIPRISE FINL INC	STOCK	03076C106	349	6100	SH	SOLE	6100	0	0
D	AMERISOURCEBERGEN CORP	STOCK	03073E105	285	5400	SH	SOLE	5400	0	0
D	AMERISTAR CASINOS INC	CALL	03070Q901	1606	500	SH CALL	SOLE	500	0	0
D	AMGEN INC	STOCK	031162100	36848	659413	SH	SOLE	659413	0	0
D	AMGEN INC	CALL	031162900	38948	6970	SH CALL	SOLE	6970	0	0
D	AMGEN INC	PUT	031162950	34925	6250	SH PUT	SOLE	6250	0	0
D	AMR CORP	STOCK	001765106	4642	152433	SH	SOLE	152433	0	0
D	AMTECH SYS INC	STOCK	032332504	688	94265	SH	SOLE	94265	0	0
D	AMVESCAP PLC	STOCK	03235E100	294	13300	SH	SOLE	13300	0	0
D	ANALOG DEVICES INC	STOCK	032654105	276	8000	SH	SOLE	8000	0	0
D	ANALOG DEVICES INC	CALL	032654905	23926	6937	SH CALL	SOLE	6937	0	0
D	ANALOG DEVICES INC	PUT	032654955	3449	1000	SH PUT	SOLE	1000	0	0
D	ANDREW CORP	STOCK	034425108	688	65000	SH	SOLE	65000	0	0
D	ANHEUSER BUSCH COS INC	STOCK	035229103	8183	162159	SH	SOLE	162159	0	0
D	ANIMAL HEALTH INTL INC	STOCK	03525N109	181	15000	SH	SOLE	15000	0	0
D	ANNALY CAP MGMT INC	STOCK	035710409	2322	150000	SH	SOLE	150000	0	0
D	ANN TAYLOR STORES CORP	STOCK	036115103	1551	40000	SH	SOLE	40000	0	0
D	ANSWERTHINK INC	STOCK	036916104	5285	1616149	SH	SOLE	1616149	0	0
D	ANSYS INC	STOCK	03662Q105	5433	107019	SH	SOLE	107019	0	0
D	ANTARES PHARMA INC	STOCK	036642106	774	600000	SH	SOLE	600000	0	0
D	AOX CORP	STOCK	037389103	1898	50000	SH	SOLE	50000	0	0
D	APPLE INC	CALL	037833900	19056	2051	SH CALL	SOLE	2051	0	0
D	APPLE INC	PUT	037833950	39719	4275	SH PUT	SOLE	4275	0	0
D	APPLE INC	STOCK	037833100	62989	677952	SH	SOLE	677952	0	0
D	APPLERA CORP	CALL	038020903	2506	1765	SH CALL	SOLE	1765	0	0
D	APPLIED MATLS INC	PUT	038222955	34108	18618	SH PUT	SOLE	18618	0	0
D	APPLIED MICRO CIRCUITS CORP	STOCK	03822W109	3770	1032988	SH	SOLE	1032988	0	0
D	APPLIX INC	STOCK	038316105	671	50000	SH	SOLE	50000	0	0
D	AQUANTIVE INC	PUT	03839G955	6419	2300	SH PUT	SOLE	2300	0	0
D	AQUANTIVE INC	STOCK	03839G105	357	12800	SH	SOLE	12800	0	0
D	AQUILA INC	STOCK	03840P102	2215	530000	SH	SOLE	530000	0	0
D	ARCH COAL INC	STOCK	039380100	3345	109000	SH	SOLE	109000	0	0
D	ARCH COAL INC	CALL	039380900	3683	1200	SH CALL	SOLE	1200	0	0
D	ARCHER DANIELS MIDLAND CO	STOCK	039483102	734	20000	SH	SOLE	20000	0	0
D	ARCHER DANIELS MIDLAND CO	CALL	039483902	2936	800	SH CALL	SOLE	800	0	0
D	ARENA PHARMACEUTICALS INC	STOCK	040047102	456	42000	SH	SOLE	42000	0	0
D	ARENA PHARMACEUTICALS INC	CALL	040047902	4032	3713	SH CALL	SOLE	3713	0	0
D	ARIAD PHARMACEUTICALS INC	CALL	04033A900	449	1000	SH CALL	SOLE	1000	0	0
D	ARIBA INC	CALL	04033V903	1504	1600	SH CALL	SOLE	1600	0	0
D	ARIBA INC	STOCK	04033V203	8939	950911	SH	SOLE	950911	0	0

D	ARM HLDGS PLC	STOCK	042068106	675	85950	SH	SOLE	85950	0	0
D	ARMOR HOLDINGS INC	STOCK	042260109	673	10000	SH	SOLE	10000	0	0
D	ARMSTRONGS WORLD INDS INC NEW	STOCK	04247X102	3051	60000	SH	SOLE	60000	0	0
D	AROTEC CORP	STOCK	042692203	170	50000	SH	SOLE	50000	0	0
D	ART TECHNOLOGY GROUP INC	STOCK	04289L107	26	11381	SH	SOLE	11381	0	0
D	ASE TEST LTD	STOCK	Y02516105	1844	162000	SH	SOLE	162000	0	0
D	ASML HLDG NV	PUT	N07059951	68308	27599	SH PUT	SOLE	27599	0	0
D	ASPEN TECHNOLOGY INC	STOCK	045327103	2054	157970	SH	SOLE	157970	0	0
D	ASSISTED LIVING CONCEPT NEV N	STOCK	04544X102	708	60000	SH	SOLE	60000	0	0
D	ASSURANT INC	STOCK	04621X108	910	16974	SH	SOLE	16974	0	0
D	ASSURED GUARANTY LTD	STOCK	G0585R106	1366	50000	SH	SOLE	50000	0	0
D	AT&T INC	STOCK	00206R102	1108	28100	SH	SOLE	28100	0	0
D	ATHEROS COMMUNICATIONS INC	PUT	04743P958	6195	2589	SH PUT	SOLE	2589	0	0
D	ATHEROS COMMUNICATIONS INC	STOCK	04743P108	500	20900	SH	SOLE	20900	0	0
D	ATLAS AMER INC	STOCK	049167109	2077	36774	SH	SOLE	36774	0	0
D	ATMEL CORP	STOCK	049513104	7558	1502599	SH	SOLE	1502599	0	0
D	ATMI INC	STOCK	00207R101	3215	105166	SH	SOLE	105166	0	0
D	AU OPTRONICS CORP	STOCK	002255107	174	12200	SH	SOLE	12200	0	0
D	AUDIODCODES LTD	STOCK	M15342104	356	52600	SH	SOLE	52600	0	0
D	AURORA OIL & GAS CORP	STOCK	052036100	783	300000	SH	SOLE	300000	0	0
D	AUTODESK INC	STOCK	052769106	16718	444623	SH	SOLE	444623	0	0
D	AUTOLIV INC	STOCK	052800109	1856	32500	SH	SOLE	32500	0	0
D	AUTOMATIC DATA PROCESSING IN	STOCK	053015103	7749	160100	SH	SOLE	160100	0	0
D	AVANEX CORP	STOCK	05348W109	8817	4925626	SH	SOLE	4925626	0	0
D	AVENTINE RENEWABLE ENERGY	CALL	05356X903	1822	1000	SH CALL	SOLE	1000	0	0
D	AVERY DENNISON CORP	STOCK	053611109	283	4400	SH	SOLE	4400	0	0
D	AVID TECHNOLOGY INC	STOCK	05367P100	1744	50000	SH	SOLE	50000	0	0
D	AVNET INC	PUT	053807953	42725	11822	SH PUT	SOLE	11822	0	0
D	AVOCENT CORP	STOCK	053893103	2854	105832	SH	SOLE	105832	0	0
D	AVON PRODS INC	STOCK	054303102	3346	89800	SH	SOLE	89800	0	0
D	BAIDU COM INC	PUT	056752958	10707	1109	SH PUT	SOLE	1109	0	0
D	BAIDU COM INC	STOCK	056752108	7588	78593	SH	SOLE	78593	0	0
D	BALDOR ELEC CO	STOCK	057741100	1887	50000	SH	SOLE	50000	0	0
D	BANKRATE INC	PUT	06646V958	1762	500	SH PUT	SOLE	500	0	0
D	BANKRATE INC	STOCK	06646V108	1938	55000	SH	SOLE	55000	0	0
D	BARNES & NOBLE INC	STOCK	067774109	596	15100	SH	SOLE	15100	0	0
D	BARNES & NOBLE INC	CALL	067774909	1973	500	SH CALL	SOLE	500	0	0
D	BARRICK GOLD CORP	CALL	067901908	4854	1700	SH CALL	SOLE	1700	0	0
D	BARRICK GOLD CORP	STOCK	067901108	15996	560273	SH	SOLE	560273	0	0
D	BAYER A G	CALL	072730902	3838	600	SH CALL	SOLE	600	0	0
D	BE AEROSPACE INC	STOCK	073302101	476	15000	SH	SOLE	15000	0	0
D	BEA SYS INC	CALL	073325902	5644	4870	SH CALL	SOLE	4870	0	0
D	BEA SYS INC	STOCK	073325102	8799	759188	SH	SOLE	759188	0	0
D	BEACON ROOFING SUPPLY INC	STOCK	073685109	1685	104121	SH	SOLE	104121	0	0
D	BEAR STEARNS COS INC	STOCK	073902108	18042	120000	SH	SOLE	120000	0	0
D	BEARINGPOINT INC	STOCK	074002106	51919	6777885	SH	SOLE	6777885	0	0
D	BEBE STORES INC	STOCK	075571109	7866	452599	SH	SOLE	452599	0	0
D	BECTON DICKINSON & CO	STOCK	075887109	246	3200	SH	SOLE	3200	0	0
D	BED BATH & BEYOND INC	STOCK	075896100	9342	232569	SH	SOLE	232569	0	0
D	BELL MICROPRODUCTS INC	STOCK	078137106	1280	200000	SH	SOLE	200000	0	0
D	BEMIS INC	STOCK	081437105	501	15000	SH	SOLE	15000	0	0
D	BENCHMARK ELECTRS INC	CALL	08160H901	1386	671	SH CALL	SOLE	671	0	0
D	BENCHMARK ELECTRS INC	STOCK	08160H101	18634	901940	SH	SOLE	901940	0	0
D	BEST BUY INC	CALL	086516901	12667	2600	SH CALL	SOLE	2600	0	0
D	BEST BUY INC	STOCK	086516101	39426	809237	SH	SOLE	809237	0	0
D	BHP BILLITON LTD	STOCK	088606108	242	5000	SH	SOLE	5000	0	0
D	BHP BILLITON LTD	PUT	088606958	3876	800	SH PUT	SOLE	800	0	0
D	BTG LOTS INC	PUT	089302953	7820	2500	SH PUT	SOLE	2500	0	0
D	BTGEN IDEC INC	CALL	09062X903	6657	1500	SH CALL	SOLE	1500	0	0
D	BIOMIMETIC THERAPEUTICS INC	STOCK	09064X101	4148	250802	SH	SOLE	250802	0	0
D	BIOTECH HOLDERS TR	PUT	09067D951	35200	2000	SH PUT	SOLE	2000	0	0
D	BIOVAIL CORP	CALL	09067J909	6558	3000	SH CALL	SOLE	3000	0	0
D	BISYS GROUP INC	STOCK	055472104	20380	1778355	SH	SOLE	1778355	0	0
D	BJ SVCS CO	PUT	055482953	6417	2300	SH PUT	SOLE	2300	0	0
D	BJS WHOLESALE CLUB INC	STOCK	05548J106	8430	249200	SH	SOLE	249200	0	0
D	BLOUNT INTL INC NEW	STOCK	095180105	1299	104300	SH	SOLE	104300	0	0
D	BLUE COAT SYSTEMS INC	CALL	09534T908	2755	750	SH CALL	SOLE	750	0	0
D	BLUE COAT SYSTEMS INC	STOCK	09534T508	1841	50115	SH	SOLE	50115	0	0
D	BLUE COAT SYSTEMS INC	PUT	09534T958	2204	600	SH PUT	SOLE	600	0	0
D	BLUEGREEN CORP	STOCK	096231105	342	30300	SH	SOLE	30300	0	0
D	BLUELINX HLDGS INC	STOCK	09624H109	1050	100000	SH	SOLE	100000	0	0
D	BMC SOFTWARE INC	STOCK	055921100	4544	147587	SH	SOLE	147587	0	0
D	BOEING CO	CALL	097023905	889	100	SH CALL	SOLE	100	0	0
D	BON-TON STORES INC	STOCK	09776J101	2109	37500	SH	SOLE	37500	0	0
D	BORDERS GROUP INC	STOCK	099709107	623	30500	SH	SOLE	30500	0	0
D	BORLAND SOFTWARE CORP	STOCK	099849101	1886	357878	SH	SOLE	357878	0	0
D	BOSTON PROPERTIES INC	STOCK	101121101	799	6805	SH	SOLE	6805	0	0
D	BOSTON SCIENTIFIC CORP	STOCK	101137107	7029	483400	SH	SOLE	483400	0	0
D	BOSTON SCIENTIFIC CORP	CALL	101137907	15267	10500	SH CALL	SOLE	10500	0	0
D	BOWATER INC	STOCK	102183100	1429	60000	SH	SOLE	60000	0	0
D	BOWNE & CO INC	STOCK	103043105	1674	106400	SH	SOLE	106400	0	0
D	BOYD GAMING CORP	STOCK	103304101	534	11200	SH	SOLE	11200	0	0
D	BRE PROPERTIES INC	STOCK	05564E106	297	4700	SH	SOLE	4700	0	0
D	BRIGHTPOINT INC	STOCK	109473405	12666	1107172	SH	SOLE	1107172	0	0
D	BRINKS CO	STOCK	109696104	1269	20000	SH	SOLE	20000	0	0
D	BRISTOL MYERS SQUIBB CO	CALL	110122908	4164	1500	SH CALL	SOLE	1500	0	0
D	BROADBAND HOLDERS TR	STOCK	11130P104	7835	500000	SH	SOLE	500000	0	0
D	BROADCOM CORP	STOCK	111320107	14197	442675	SH	SOLE	442675	0	0
D	BROADCOM CORP	CALL	111320907	8207	2559	SH CALL	SOLE	2559	0	0
D	BROOKFIELD ASSET MGMT INC	STOCK	112585104	1254	24000	SH	SOLE	24000	0	0
D	BROOKS AUTOMATION INC	PUT	114340952	1919	1119	SH PUT	SOLE	1119	0	0
D	BROWN SHOE INC NEW	STOCK	115736100	3797	90400	SH	SOLE	90400	0	0

D	BRUNSWICK CORP	STOCK	117043109	1911	60000 SH	SOLE	60000	0	0
D	BUCKLE INC	STOCK	118440106	280	7851 SH	SOLE	7851	0	0
D	BUILDING MATLS HLDG CORP	STOCK	120113105	11551	637822 SH	SOLE	637822	0	0
D	BURGER KING HLDGS INC	STOCK	121208201	1944	90007 SH	SOLE	90007	0	0
D	BURLINGTON NORTN SANTA FE C	STOCK	12189T104	11268	140100 SH	SOLE	140100	0	0
D	BUSINESS OBJECTS S A	STOCK	12328X107	51375	1419589 SH	SOLE	1419589	0	0
D	C H ROBINSON WORLDWIDE INC	PUT	12541W959	17077	3554 SH PUT	SOLE	3554	0	0
D	CA INC	CALL	12673P905	6610	2551 SH CALL	SOLE	2551	0	0
D	CABLEVISION SYS CORP	STOCK	12686C109	3793	124642 SH	SOLE	124642	0	0
D	CABOT CORP	CALL	127055901	477	100 SH CALL	SOLE	100	0	0
D	CABOT MICROELECTRONICS CORP	PUT	12709P953	838	250 SH PUT	SOLE	250	0	0
D	CABOT OIL & GAS CORP	STOCK	127097103	6732	100000 SH	SOLE	100000	0	0
D	CACI INTL INC	STOCK	127190304	6879	146800 SH	SOLE	146800	0	0
D	CADBURY SCHWEPPES PLC	STOCK	127209302	257	5000 SH	SOLE	5000	0	0
D	CAL DIVE INTL INC DEL	STOCK	12802T101	830	68000 SH	SOLE	68000	0	0
D	CALIFORNIA PIZZA KITCHEN INC	STOCK	13054D109	1316	40000 SH	SOLE	40000	0	0
D	CAMBREX CORP	STOCK	132011107	3445	140060 SH	SOLE	140060	0	0
D	CAMECO CORP	STOCK	13321L108	1433	35000 SH	SOLE	35000	0	0
D	CAMERON INTERNATIONAL CORP	STOCK	13342B105	3453	55000 SH	SOLE	55000	0	0
D	CANADIAN NATL RY CO	STOCK	136375102	1986	45000 SH	SOLE	45000	0	0
D	CANADIAN SOLAR INC	STOCK	136635109	195	20004 SH	SOLE	20004	0	0
D	CANARGO ENERGY CORP	STOCK	137225108	739	697500 SH	SOLE	697500	0	0
D	CAPITAL ONE FINL CORP	STOCK	14040H105	2362	31300 SH	SOLE	31300	0	0
D	CARACO PHARMACEUTICAL LABS L	STOCK	14075T107	12487	1025184 SH	SOLE	1025184	0	0
D	CARDINAL HEALTH INC	STOCK	14149Y108	6142	84200 SH	SOLE	84200	0	0
D	CARDIOME PHARMA CORP	STOCK	14159U202	1015	100000 SH	SOLE	100000	0	0
D	CARRIER ACCESS CORP	STOCK	144460102	2020	395233 SH	SOLE	395233	0	0
D	CARRIZO OIL & CO INC	STOCK	144577103	2622	75000 SH	SOLE	75000	0	0
D	CASCADE MICROTECH INC	STOCK	147322101	605	42475 SH	SOLE	42475	0	0
D	CASH SYSTEMS INC	STOCK	14756B102	576	97220 SH	SOLE	97220	0	0
D	CASTLE BRANDS INC	STOCK	148435100	139	20000 SH	SOLE	20000	0	0
D	CATERPILLAR INC DEL	STOCK	149123101	16728	249558 SH	SOLE	249558	0	0
D	CELADON GROUP INC	STOCK	150838100	2987	178865 SH	SOLE	178865	0	0
D	CELESTICA INC	CALL	15101Q908	1624	2649 SH CALL	SOLE	2649	0	0
D	CELGENE CORP	STOCK	151020104	1574	30000 SH	SOLE	30000	0	0
D	CELGENE CORP	PUT	151020954	2623	500 SH PUT	SOLE	500	0	0
D	CEMEX SAB DE CV	STOCK	151290889	7343	224200 SH	SOLE	224200	0	0
D	CENTENNIAL COMMUNCTNS CORP N	STOCK	15133V208	1125	136645 SH	SOLE	136645	0	0
D	CENTEX CORP	STOCK	152312104	5824	139400 SH	SOLE	139400	0	0
D	CENTILLIUM COMMUNICATIONS IN	STOCK	152319109	384	200000 SH	SOLE	200000	0	0
D	CENVEO INC	STOCK	15670S105	486	20000 SH	SOLE	20000	0	0
D	CEPHALON INC	PUT	156708959	3276	460 SH PUT	SOLE	460	0	0
D	CERIDIAN CORP NEW	STOCK	156779100	874	25100 SH	SOLE	25100	0	0
D	CHARTER COMMUNICATIONS INC D	STOCK	16117M107	2803	1004500 SH	SOLE	1004500	0	0
D	CHECK POINT SOFTWARE TECH LT	STOCK	M22465104	34561	1551192 SH	SOLE	1551192	0	0
D	CHECK POINT SOFTWARE TECH LT	CALL	M22465904	5793	2600 SH CALL	SOLE	2600	0	0
D	CHEESECAKE FACTORY INC	STOCK	163072101	3742	140400 SH	SOLE	140400	0	0
D	CHEMTURA CORP	STOCK	163893100	2982	272830 SH	SOLE	272830	0	0
D	CHENIERE ENERGY INC	CALL	16411R908	1558	500 SH CALL	SOLE	500	0	0
D	CHENIERE ENERGY INC	STOCK	16411R208	2487	116500 SH	SOLE	116500	0	0
D	CHENIERE ENERGY INC	STOCK	16411R208	1308	42000 SH	SOLE	42000	0	0
D	CHESAPEAKE ENERGY CORP	CALL	165167907	926	300 SH CALL	SOLE	300	0	0
D	CHICAGO BRIDGE & IRON CO N V	STOCK	167250109	3702	120400 SH	SOLE	120400	0	0
D	CHICAGO MERCANTILE HLDGS INC	STOCK	167760107	10543	19800 SH	SOLE	19800	0	0
D	CHICOS FAS INC	CALL	168615902	4642	1900 SH CALL	SOLE	1900	0	0
D	CHICOS FAS INC	STOCK	168615102	4411	180550 SH	SOLE	180550	0	0
D	CHINA BAK BATTERY INC	STOCK	16936Y100	523	160779 SH	SOLE	160779	0	0
D	CHINA GREENTECH CORP LTD	STOCK	16938P107	2569	230000 SH	SOLE	230000	0	0
D	CHINA MED TECHNOLOGIES INC	STOCK	169483104	233	10110 SH	SOLE	10110	0	0
D	CHINA TECHFAITH WIRLS COMM T	STOCK	169424108	977	106750 SH	SOLE	106750	0	0
D	CHINA UNICOM LTD	STOCK	16945R104	991	70000 SH	SOLE	70000	0	0
D	CHIQUITA BRANDS INTL INC	CALL	170032909	1402	1000 SH CALL	SOLE	1000	0	0
D	CHIQUITA BRANDS INTL INC	STOCK	170032809	3505	250000 SH	SOLE	250000	0	0
D	CHORDIANT SOFTWARE INC	STOCK	170404305	3304	319200 SH	SOLE	319200	0	0
D	CHRISTOPHER & BANKS CORP	CALL	171046905	4283	2200 SH CALL	SOLE	2200	0	0
D	CHRISTOPHER & BANKS CORP	STOCK	171046105	15089	775000 SH	SOLE	775000	0	0
D	CHUBB CORP	STOCK	171232101	670	12970 SH	SOLE	12970	0	0
D	CIENA CORP	STOCK	171779309	15007	536915 SH	SOLE	536915	0	0
D	CIGNA CORP	STOCK	125509109	4993	35000 SH	SOLE	35000	0	0
D	CINTAS CORP	STOCK	172908105	793	21968 SH	SOLE	21968	0	0
D	CIPHERGEN BIOSYSTEMS INC	STOCK	17252Y104	168	120000 SH	SOLE	120000	0	0
D	CIRCUIT CITY STORE INC	CALL	172737908	1853	1000 SH CALL	SOLE	1000	0	0
D	CIRCUIT CITY STORE INC	STOCK	172737108	5561	300100 SH	SOLE	300100	0	0
D	CIRRUS LOGIC INC	STOCK	172755100	3283	428602 SH	SOLE	428602	0	0
D	CISCO SYS INC	STOCK	17275R102	3128	122511 SH	SOLE	122511	0	0
D	CITIGROUP INC	PUT	172967951	3080	600 SH PUT	SOLE	600	0	0
D	CITIGROUP INC	STOCK	172967101	10268	200000 SH	SOLE	200000	0	0
D	CITIGROUP INC	CALL	172967901	2054	400 SH CALL	SOLE	400	0	0
D	CITRIX SYS INC	STOCK	177376100	42423	1324485 SH	SOLE	1324485	0	0
D	CKX INC	STOCK	12562M106	4040	364000 SH	SOLE	364000	0	0
D	CLEARWIRE CORP	STOCK	185385309	5379	262792 SH	SOLE	262792	0	0
D	CLECO CORP NEW	STOCK	12561W105	3257	126100 SH	SOLE	126100	0	0
D	CLOROX CO DEL	STOCK	189054109	1904	29900 SH	SOLE	29900	0	0
D	CMGI INC	STOCK	125750109	70	33068 SH	SOLE	33068	0	0
D	CMS ENERGY CORP	STOCK	125896100	11038	620100 SH	SOLE	620100	0	0
D	CNET NETWORKS INC	STOCK	12613R104	131	15000 SH	SOLE	15000	0	0
D	CNX GAS CORP	STOCK	12618H309	1374	48500 SH	SOLE	48500	0	0
D	COCA COLA CO	STOCK	191216100	21877	455777 SH	SOLE	455777	0	0
D	COCA COLA ENTERPRISES INC	STOCK	191219104	352	17400 SH	SOLE	17400	0	0
D	COEUR D'ALENE MINES CORP IDA	STOCK	192108108	2256	548900 SH	SOLE	548900	0	0
D	COGENT INC	STOCK	19239Y108	6584	489504 SH	SOLE	489504	0	0
D	COGNIZANT TECHNOLOGY SOLUTIO	PUT	192446952	13241	1500 SH PUT	SOLE	1500	0	0

D	COGNOS INC	STOCK	19244C109	21122	536237	SH	SOLE	536237	0	0
D	COGNOS INC	CALL	19244C909	11900	3021	SH CALL	SOLE	3021	0	0
D	COHEN & STEERS INC	STOCK	19247A100	3800	88200	SH	SOLE	88200	0	0
D	COHERENT INC	STOCK	192479103	655	20644	SH	SOLE	20644	0	0
D	COLDWATER CREEK INC	STOCK	193068103	7792	384200	SH	SOLE	384200	0	0
D	COLDWATER CREEK INC	CALL	193068903	3042	1500	SH CALL	SOLE	1500	0	0
D	COLGATE PALMOLIVE CO	STOCK	194162103	3185	47680	SH	SOLE	47680	0	0
D	COLUMBIA LABS INC	STOCK	197779101	134	100000	SH	SOLE	100000	0	0
D	COMCAST CORP NEW	STOCK	20030N101	2595	100000	SH	SOLE	100000	0	0
D	COMCAST CORP NEW	PUT	20030N951	3114	1200	SH PUT	SOLE	1200	0	0
D	COMCAST CORP NEW	STOCK	20030N200	1146	45000	SH	SOLE	45000	0	0
D	COMFORT SYS USA INC	STOCK	199908104	2995	250000	SH	SOLE	250000	0	0
D	COMMUNITY HEALTH SYS INC NEW	STOCK	203668108	5288	150000	SH	SOLE	150000	0	0
D	COMMVAULT SYSTEMS INC	STOCK	204166102	2948	181963	SH	SOLE	181963	0	0
D	COMPANHIA VALE DO RIO DOCE	STOCK	204412209	553	14950	SH	SOLE	14950	0	0
D	COMPUTER SCIENCES CORP	STOCK	205363104	12473	239261	SH	SOLE	239261	0	0
D	COMPUTER SCIENCES CORP	CALL	205363904	6256	1200	SH CALL	SOLE	1200	0	0
D	COMPUWARE CORP	STOCK	205638109	4820	507882	SH	SOLE	507882	0	0
D	COMSTOCK HOMEBUILDING COS IN	STOCK	205684103	162	40000	SH	SOLE	40000	0	0
D	COMTECH GROUP INC	STOCK	205821200	354	20250	SH	SOLE	20250	0	0
D	CONAGRA FOODS INC	CALL	205887902	3737	1500	SH CALL	SOLE	1500	0	0
D	CONAGRA FOODS INC	STOCK	205887102	6115	245500	SH	SOLE	245500	0	0
D	CONCURRENT COMPUTER CORP NEW	STOCK	206710204	3362	2141587	SH	SOLE	2141587	0	0
D	CONOCOPHILLIPS	PUT	20825C954	2734	400	SH PUT	SOLE	400	0	0
D	CONSOL ENERGY INC	PUT	20854P959	978	250	SH PUT	SOLE	250	0	0
D	CONSOL ENERGY INC	CALL	20854P909	7826	2000	SH CALL	SOLE	2000	0	0
D	CONSOL ENERGY INC	STOCK	20854P109	10956	280000	SH	SOLE	280000	0	0
D	CONSTELLATION BRANDS INC	STOCK	21036P108	10272	485000	SH	SOLE	485000	0	0
D	CONSTELLATION BRANDS INC	CALL	21036P908	1514	715	SH CALL	SOLE	715	0	0
D	CONVERA CORP	STOCK	211919105	77	24408	SH	SOLE	24408	0	0
D	COPA HOLDINGS SA	STOCK	P31076105	1143	22200	SH	SOLE	22200	0	0
D	COPART INC	STOCK	217204106	630	22500	SH	SOLE	22500	0	0
D	CORILLIAN CORP	STOCK	218725109	1644	329415	SH	SOLE	329415	0	0
D	CORINTHIAN COLLEGES INC	STOCK	218868107	2764	201022	SH	SOLE	201022	0	0
D	CORNING INC	STOCK	219350105	855	37585	SH	SOLE	37585	0	0
D	CORRECTIONS CORP AMER NEW	STOCK	22025Y407	570	10800	SH	SOLE	10800	0	0
D	COSTCO WHSL CORP NEW	STOCK	22160K105	5050	93794	SH	SOLE	93794	0	0
D	COVAD COMMUNICATIONS GROUP I	STOCK	222814204	191	150000	SH	SOLE	150000	0	0
D	COVENANT TRANS INC	STOCK	22284P105	989	89722	SH	SOLE	89722	0	0
D	CREE INC	STOCK	225447101	242	14700	SH	SOLE	14700	0	0
D	CRESCENT REAL ESTATE EQUITIE	CALL	225756905	2006	1000	SH CALL	SOLE	1000	0	0
D	CRESCENT REAL ESTATE EQUITIE	STOCK	225756105	401	20000	SH	SOLE	20000	0	0
D	CROCS INC	STOCK	227046109	12049	254995	SH	SOLE	254995	0	0
D	CROCS INC	PUT	227046959	2315	490	SH PUT	SOLE	490	0	0
D	CROCS INC	CALL	227046909	7560	1600	SH CALL	SOLE	1600	0	0
D	CROSS CTRY HEALTHCARE INC	STOCK	227483104	1641	90000	SH	SOLE	90000	0	0
D	CRUCCELL N V	STOCK	228769105	632	25000	SH	SOLE	25000	0	0
D	CSK AUTO CORP	PUT	125965953	3440	2000	SH PUT	SOLE	2000	0	0
D	CSX CORP	STOCK	126408103	2193	54750	SH	SOLE	54750	0	0
D	CSX CORP	CALL	126408903	801	200	SH CALL	SOLE	200	0	0
D	CTRIP COM INTL LTD	STOCK	22943F100	23445	350000	SH	SOLE	350000	0	0
D	CUBIC CORP	STOCK	229669106	3454	159600	SH	SOLE	159600	0	0
D	CUMMINS INC	PUT	231021956	2894	200	SH PUT	SOLE	200	0	0
D	CV THERAPEUTICS INC	CALL	126667904	590	750	SH CALL	SOLE	750	0	0
D	CVS CORP	CALL	126650900	3414	1000	SH CALL	SOLE	1000	0	0
D	CVS CORP	STOCK	126650100	10585	310050	SH	SOLE	310050	0	0
D	CYLACEL PHARMACEUTICALS INC	STOCK	23254L108	1829	236000	SH	SOLE	236000	0	0
D	CYMER INC	PUT	232572957	3262	785	SH PUT	SOLE	785	0	0
D	CYPRESS BIOSCIENCES INC	CALL	232674907	3040	4000	SH CALL	SOLE	4000	0	0
D	CYPRESS SEMICONDUCTOR CORP	STOCK	232806109	4638	250000	SH	SOLE	250000	0	0
D	CYPRESS SEMICONDUCTOR CORP	PUT	232806959	2076	1119	SH PUT	SOLE	1119	0	0
D	CYTEC INDS INC	STOCK	232820100	7761	138000	SH	SOLE	138000	0	0
D	CYTYC CORP	CALL	232946903	3421	1000	SH CALL	SOLE	1000	0	0
D	DAIMLERCHRYSLER AG	STOCK	D1668R123	733	8960	SH	SOLE	8960	0	0
D	DANAHER CORP DEL	PUT	235851952	4287	600	SH PUT	SOLE	600	0	0
D	DANKA BUSINESS SYS PLC	STOCK	236277109	1296	1200000	SH	SOLE	1200000	0	0
D	DARDEN RESTAURANTS INC	STOCK	237194105	515	12500	SH	SOLE	12500	0	0
D	DARLING INTL INC	STOCK	237266101	265	40710	SH	SOLE	40710	0	0
D	DECKERS OUTDOOR CORP	PUT	243537957	6392	900	SH PUT	SOLE	900	0	0
D	DEERE & CO	PUT	244199955	5975	550	SH PUT	SOLE	550	0	0
D	DELIA'S INC NEW	STOCK	246911101	1836	200000	SH	SOLE	200000	0	0
D	DELL INC	CALL	24702R901	11489	4950	SH CALL	SOLE	4950	0	0
D	DELL INC	STOCK	24702R101	23742	1022914	SH	SOLE	1022914	0	0
D	DENTSPLY INTL INC NEW	STOCK	249030107	2948	90000	SH	SOLE	90000	0	0
D	DEVON ENERGY CORP NEW	STOCK	25179M103	5953	86000	SH	SOLE	86000	0	0
D	DIAGEO P L C	STOCK	25243Q205	405	5000	SH	SOLE	5000	0	0
D	DIAMOND OFFSHORE DRILLING IN	STOCK	25271C102	372	4600	SH	SOLE	4600	0	0
D	DIAMONDS TR	PUT	252787956	51908	4200	SH PUT	SOLE	4200	0	0
D	DIGITAL RIV INC	PUT	25388B954	8613	1559	SH PUT	SOLE	1559	0	0
D	DILLARDS INC	CALL	254067901	3273	1000	SH CALL	SOLE	1000	0	0
D	DISCOVERY LABORATORIES INC N	STOCK	254668106	551	232423	SH	SOLE	232423	0	0
D	DISNEY WALT CO	PUT	254687956	5165	1500	SH PUT	SOLE	1500	0	0
D	DOBSON COMMUNICATIONS CORP	STOCK	256069105	1424	165795	SH	SOLE	165795	0	0
D	DOLLAR TREE STORES INC	CALL	256747906	3824	1000	SH CALL	SOLE	1000	0	0
D	DOMTAR CORP	STOCK	257559104	2467	265000	SH	SOLE	265000	0	0
D	DONNELLEY R R & SONS CO	STOCK	257867101	6586	180000	SH	SOLE	180000	0	0
D	DOUBLE-TAKE SOFTWARE INC	STOCK	258598101	2281	168935	SH	SOLE	168935	0	0
D	DOW CHEM CO	STOCK	260543103	6682	145700	SH	SOLE	145700	0	0
D	DOW CHEM CO	CALL	260543903	6420	1400	SH CALL	SOLE	1400	0	0
D	DOW JONES & CO INC	STOCK	260561105	10343	300047	SH	SOLE	300047	0	0
D	DR REDDYS LABS LTD	STOCK	256135203	658	40000	SH	SOLE	40000	0	0
D	DRDGOLD LTD	STOCK	26152H103	1005	1500000	SH	SOLE	1500000	0	0

D DREAMWORKS ANIMATION SKG INC	CALL	26153C903	2446	800 SH	CALL	SOLE	800	0	0
D DRESS BARN INC	STOCK	261570105	579	27800 SH		SOLE	27800	0	0
D DSP GROUP INC	STOCK	23332B106	8671	456394 SH		SOLE	456394	0	0
D DST SYS INC DEL	CALL	233326907	3008	400 SH	CALL	SOLE	400	0	0
D DTE ENERGY CO	STOCK	233331107	4785	99900 SH		SOLE	99900	0	0
D E M C CORP MASS	STOCK	268648102	13699	989133 SH		SOLE	989133	0	0
D E TRADE FINANCIAL CORP	CALL	269246904	2122	1000 SH	CALL	SOLE	1000	0	0
D E TRADE FINANCIAL CORP	STOCK	269246104	14158	667224 SH		SOLE	667224	0	0
D EAGLE HOSPITALITY PPTY TR IN	STOCK	26959T102	677	60700 SH		SOLE	60700	0	0
D EAGLE MATERIALS INC	STOCK	26969p108	7605	170400 SH		SOLE	170400	0	0
D EAGLE TEST SYS INC	STOCK	270006109	1599	96118 SH		SOLE	96118	0	0
D EARTHLINK INC	STOCK	270321102	1611	219132 SH		SOLE	219132	0	0
D EBAY INC	STOCK	278642103	23673	714104 SH		SOLE	714104	0	0
D ECI TELECOM LTD	STOCK	268258100	2797	341131 SH		SOLE	341131	0	0
D ECLIPSYS CORP	STOCK	278856109	1734	90000 SH		SOLE	90000	0	0
D ECLIPSYS CORP	CALL	278856909	964	500 SH	CALL	SOLE	500	0	0
D EDGAR ONLINE INC	STOCK	279765101	1250	459451 SH		SOLE	459451	0	0
D EDO CORP	STOCK	281347104	1514	57800 SH		SOLE	57800	0	0
D EDWARDS AG INC	PUT	281760958	2075	300 SH	PUT	SOLE	300	0	0
D EGL INC	CALL	268484902	5945	1500 SH	CALL	SOLE	1500	0	0
D EL PASO CORP	STOCK	28336L109	2894	200000 SH		SOLE	200000	0	0
D ELAN PLC	PUT	284131958	1595	1200 SH	PUT	SOLE	1200	0	0
D ELAN PLC	CALL	284131908	9303	7000 SH	CALL	SOLE	7000	0	0
D ELECTRO OPTICAL SCIENCES INC	STOCK	285192100	515	100000 SH		SOLE	100000	0	0
D ELECTRO SCIENTIFIC INDS	STOCK	285229100	962	50004 SH		SOLE	50004	0	0
D ELECTRONIC ARTS INC	PUT	285512959	10072	2000 SH	PUT	SOLE	2000	0	0
D ELECTRONIC ARTS INC	STOCK	285512109	2014	40000 SH		SOLE	40000	0	0
D ELECTRONIC DATA SYS NEW	PUT	285661954	3322	1200 SH	PUT	SOLE	1200	0	0
D ELECTRONIC DATA SYS NEW	STOCK	285661104	1089	39336 SH		SOLE	39336	0	0
D ELECTRONICS FOR IMAGING INC	STOCK	286082102	3710	158222 SH		SOLE	158222	0	0
D ELITE PHARMACEUTICALS INC	STOCK	28659T200	32	13470 SH		SOLE	13470	0	0
D EMAGEON INC	STOCK	29076V109	14523	1320308 SH		SOLE	1320308	0	0
D EMAGEON INC	CALL	29076V909	4158	3780 SH	CALL	SOLE	3780	0	0
D EMCORE CORP	STOCK	290846104	304	60700 SH		SOLE	60700	0	0
D EMDEON CORP	CALL	290849908	1513	1000 SH	CALL	SOLE	1000	0	0
D EMERSON ELEC CO	STOCK	291011104	12182	282700 SH		SOLE	282700	0	0
D EMERSON ELEC CO	CALL	291011904	3447	800 SH	CALL	SOLE	800	0	0
D EMMIS COMMUNICATIONS CORP	STOCK	291525103	12662	1500222 SH		SOLE	1500222	0	0
D EMPIRE RES INC DEL	STOCK	29206E100	839	75000 SH		SOLE	75000	0	0
D EMPLOYERS HOLDINGS INC	STOCK	292218104	1606	80200 SH		SOLE	80200	0	0
D EMULEX CORP	STOCK	292475209	14719	804749 SH		SOLE	804749	0	0
D EMULEX CORP	CALL	292475909	1829	1000 SH	CALL	SOLE	1000	0	0
D ENCANA CORP	CALL	292505904	11392	2250 SH	CALL	SOLE	2250	0	0
D ENDO PHARMACEUTICALS HLDGS I	CALL	29264F905	7350	2500 SH	CALL	SOLE	2500	0	0
D ENDO PHARMACEUTICALS HLDGS I	STOCK	29264F205	3381	115000 SH		SOLE	115000	0	0
D ENERGY CONVERSION DEVICES IN	PUT	292659959	1747	500 SH	PUT	SOLE	500	0	0
D ENERGY CONVERSION DEVICES IN	STOCK	292659109	5694	162963 SH		SOLE	162963	0	0
D ENERGY EAST CORP	STOCK	29266M109	3654	150000 SH		SOLE	150000	0	0
D ENTRAVISION COMMUNICATIONS C	STOCK	29382R107	3971	425200 SH		SOLE	425200	0	0
D ENTRUST INC	STOCK	293848107	10194	2529500 SH		SOLE	2529500	0	0
D ENZON PHARMACEUTICALS INC	STOCK	293904108	2430	298142 SH		SOLE	298142	0	0
D EPIX PHARMACEUTICALS INC	STOCK	26881Q309	5817	868196 SH		SOLE	868196	0	0
D EQUITY RESIDENTIAL	STOCK	29476L107	1894	39279 SH		SOLE	39279	0	0
D ERICSSON L M TEL CO	CALL	294821908	21805	5879 SH	CALL	SOLE	5879	0	0
D ERICSSON L M TEL CO	STOCK	294821608	366	9875 SH		SOLE	9875	0	0
D ESPEED INC	STOCK	296643109	202	21277 SH		SOLE	21277	0	0
D ESS TECHNOLOGY INC	STOCK	269151106	221	172929 SH		SOLE	172929	0	0
D ETHAN ALLEN INTERIORS INC	STOCK	297602104	3131	88584 SH		SOLE	88584	0	0
D EVCI CAREER COLLEGES INC	STOCK	26926P100	76	143000 SH		SOLE	143000	0	0
D EVERGREEN SOLAR INC	STOCK	30033R108	1467	150421 SH		SOLE	150421	0	0
D EXAR CORP	STOCK	300645108	4003	302330 SH		SOLE	302330	0	0
D EXCO RESOURCES INC	STOCK	269279402	663	40000 SH		SOLE	40000	0	0
D EXELIXIS INC	CALL	30161Q904	1491	1500 SH	CALL	SOLE	1500	0	0
D EXELIXIS INC	STOCK	30161Q104	1242	125000 SH		SOLE	125000	0	0
D EXPRESS SCRIPTS INC	CALL	302182900	4843	600 SH	CALL	SOLE	600	0	0
D EXPRESS SCRIPTS INC	STOCK	302182100	7922	98146 SH		SOLE	98146	0	0
D EXTREME NETWORKS INC	STOCK	30226D106	3808	900155 SH		SOLE	900155	0	0
D EXXON MOBIL CORP	STOCK	30231G102	1886	25000 SH		SOLE	25000	0	0
D F5 NETWORKS INC	PUT	315616952	6001	900 SH	PUT	SOLE	900	0	0
D F5 NETWORKS INC	STOCK	315616102	17674	265063 SH		SOLE	265063	0	0
D FAIR ISAAC CORP	STOCK	303250104	2325	60100 SH		SOLE	60100	0	0
D FAIRCHILD SEMICONDUCTOR INTL	PUT	303726953	836	500 SH	PUT	SOLE	500	0	0
D FALCONSTOR SOFTWARE INC	STOCK	306137100	994	95415 SH		SOLE	95415	0	0
D FAMILY DLR STORES INC	STOCK	307000109	3140	106000 SH		SOLE	106000	0	0
D FEDERAL REALTY INVT TR	STOCK	313747206	236	2600 SH		SOLE	2600	0	0
D FEDERATED INVS INC PA	STOCK	314211103	3856	105000 SH		SOLE	105000	0	0
D FEDEX CORP	PUT	31428X956	10743	1000 SH	PUT	SOLE	1000	0	0
D FIBERTOWER CORP	STOCK	31567R100	7792	1501335 SH		SOLE	1501335	0	0
D FIDELITY NATL INFORMATION SV	STOCK	31620M106	6364	140000 SH		SOLE	140000	0	0
D FINISAR	STOCK	31787A101	719	205536 SH		SOLE	205536	0	0
D FINISH LINE INC	STOCK	317923100	933	74065 SH		SOLE	74065	0	0
D FIRST DATA CORP	PUT	319963954	3228	1200 SH	PUT	SOLE	1200	0	0
D FIRST DATA CORP	STOCK	319963104	23543	875200 SH		SOLE	875200	0	0
D FIRST DATA CORP	CALL	319963904	8339	3100 SH	CALL	SOLE	3100	0	0
D FIRST HORIZON NATL CORP	PUT	320517955	2076	500 SH	PUT	SOLE	500	0	0
D FIRST MARBLEHEAD CORP	PUT	320771958	2244	500 SH	PUT	SOLE	500	0	0
D FIRST MERCURY FINANCIAL CORP	STOCK	320841109	1531	74500 SH		SOLE	74500	0	0
D FIRST SOLAR INC	STOCK	336433107	13541	260357 SH		SOLE	260357	0	0
D FLAMEL TECHNOLOGIES SA	PUT	338488959	3072	1200 SH	PUT	SOLE	1200	0	0
D FLOWERS FOODS INC	STOCK	343498101	302	10000 SH		SOLE	10000	0	0
D FLUOR CORP NEW	PUT	343412952	3589	400 SH	PUT	SOLE	400	0	0
D FMC TECHNOLOGIES INC	PUT	30249U951	6976	1000 SH	PUT	SOLE	1000	0	0

D	FOCUS MEDIA HLDG LTD	STOCK	34415V109	10188	129850	SH	SOLE	129850	0	0
D	FOMENTO ECONOMICO MEXICANO S	STOCK	344419106	4416	40000	SH	SOLE	40000	0	0
D	FOOT LOCKER INC	CALL	344849904	1178	500	SH CALL	SOLE	500	0	0
D	FOOT LOCKER INC	STOCK	344849104	9538	405000	SH	SOLE	405000	0	0
D	FOREST LABS INC	PUT	345838956	5144	1000	SH PUT	SOLE	1000	0	0
D	FOREST LABS INC	STOCK	345838106	242	4700	SH	SOLE	4700	0	0
D	FORTUNE BRANDS INC	STOCK	349631101	788	10000	SH	SOLE	10000	0	0
D	FORWARD INDS INC N Y	STOCK	349862300	582	140000	SH	SOLE	140000	0	0
D	FOSTER WHEELER LTD	STOCK	G36535139	453	7750	SH	SOLE	7750	0	0
D	FOUNDATION COAL HLDGS INC	STOCK	35039W100	5694	165800	SH	SOLE	165800	0	0
D	FOUNDATION COAL HLDGS INC	CALL	35039W900	8242	2400	SH CALL	SOLE	2400	0	0
D	FOUNDRY NETWORKS INC	STOCK	35063R100	32808	2417716	SH	SOLE	2417716	0	0
D	FOUNDRY NETWORKS INC	CALL	35063R900	679	500	SH CALL	SOLE	500	0	0
D	FOXHOLLOW TECHNOLOGIES INC	CALL	35166A903	1044	500	SH CALL	SOLE	500	0	0
D	FPL GROUP INC	STOCK	302571104	7194	117600	SH	SOLE	117600	0	0
D	FRANCE TELECOM	STOCK	35177Q105	1434	54300	SH	SOLE	54300	0	0
D	FREDS INC	STOCK	356108100	838	57000	SH	SOLE	57000	0	0
D	FREEPORT-MCMORAN COPPER & GO	STOCK	35671D857	20320	307000	SH	SOLE	307000	0	0
D	FRIEDMAN BILLINGS RAMSEY GRO	STOCK	358434108	2876	520962	SH	SOLE	520962	0	0
D	FRONTIER OIL CORP	CALL	35914P905	1632	500	SH CALL	SOLE	500	0	0
D	FRONTIER OIL CORP	STOCK	35914P105	1632	50000	SH	SOLE	50000	0	0
D	FUEL TECH INC	STOCK	359523107	308	12500	SH	SOLE	12500	0	0
D	FULLER H B CO	STOCK	359694106	2182	80000	SH	SOLE	80000	0	0
D	GAIAM INC	STOCK	36268Q103	315	20000	SH	SOLE	20000	0	0
D	GALAXY ENERGY CORP	STOCK	36318B106	12	75000	SH	SOLE	75000	0	0
D	GAP INC DEL	STOCK	364760108	9126	530300	SH	SOLE	530300	0	0
D	GAP INC DEL	CALL	364760908	2065	1200	SH CALL	SOLE	1200	0	0
D	GARMIN LTD	STOCK	G37260109	9614	177547	SH	SOLE	177547	0	0
D	GARTNER INC	STOCK	366651107	805	33615	SH	SOLE	33615	0	0
D	GEMSTAR-TV GUIDE INTL INC	STOCK	36866W106	27859	6649001	SH	SOLE	6649001	0	0
D	GENAERA CORP	STOCK	36867G100	301	700000	SH	SOLE	700000	0	0
D	GENCORP INC	STOCK	368682100	6921	500100	SH	SOLE	500100	0	0
D	GENELABS TECHNOLOGIES INC	STOCK	368706206	368	200000	SH	SOLE	200000	0	0
D	GENENTECH INC	PUT	368710956	14782	1800	SH PUT	SOLE	1800	0	0
D	GENERAL DYNAMICS CORP	STOCK	369550108	237	3100	SH	SOLE	3100	0	0
D	GENERAL ELECTRIC CO	STOCK	369604103	14786	418148	SH	SOLE	418148	0	0
D	GENERAL ELECTRIC CO	CALL	369604903	10608	3000	SH CALL	SOLE	3000	0	0
D	GENERAL MLS INC	STOCK	370334104	1747	30000	SH	SOLE	30000	0	0
D	GENERAL MTRS CORP	CALL	370442905	460	150	SH CALL	SOLE	150	0	0
D	GENESCO INC	STOCK	371532102	1454	35000	SH	SOLE	35000	0	0
D	GENESIS HEALTHCARE CORP	CALL	37184D901	5680	900	SH CALL	SOLE	900	0	0
D	GENESIS HEALTHCARE CORP	STOCK	37184D101	2840	45000	SH	SOLE	45000	0	0
D	GENESIS LEASE LTD	STOCK	37183T107	6558	250800	SH	SOLE	250800	0	0
D	GENZYME CORP	CALL	372917904	10203	1700	SH CALL	SOLE	1700	0	0
D	GENZYME CORP	STOCK	372917104	5102	85000	SH	SOLE	85000	0	0
D	GERDAU AMERISTEEL CORP	STOCK	37373P105	1471	125000	SH	SOLE	125000	0	0
D	GFI GROUP INC	CALL	361652909	3399	500	SH CALL	SOLE	500	0	0
D	GILEAD SCIENCES INC	STOCK	375558103	2295	30000	SH	SOLE	30000	0	0
D	GILEAD SCIENCES INC	CALL	375558903	4599	600	SH CALL	SOLE	600	0	0
D	GLATFELTER	STOCK	377316104	2236	150000	SH	SOLE	150000	0	0
D	GLENAYRE TECHNOLOGIES INC	STOCK	377899109	2645	1219051	SH	SOLE	1219051	0	0
D	GLOBAL CROSSING LTD	STOCK	G3921A175	316	11498	SH	SOLE	11498	0	0
D	GLOBAL PMTS INC	STOCK	37940X102	4129	121228	SH	SOLE	121228	0	0
D	GLOBAL SANTAFE CORP	PUT	G3930E951	7710	1250	SH PUT	SOLE	1250	0	0
D	GLOBAL SANTAFE CORP	CALL	G3930E901	7402	1200	SH CALL	SOLE	1200	0	0
D	GLOBAL SANTAFE CORP	STOCK	G3930E101	13737	222712	SH	SOLE	222712	0	0
D	GOLD RESV INC	STOCK	38068N108	503	74900	SH	SOLE	74900	0	0
D	GOLD CORP INC NEW	CALL	380956909	1441	600	SH CALL	SOLE	600	0	0
D	GOLD CORP INC NEW	STOCK	380956409	335	13930	SH	SOLE	13930	0	0
D	GOLDEN STAR RES LTD CDA	STOCK	38119T104	4686	1065080	SH	SOLE	1065080	0	0
D	GOLDEN STAR RES LTD CDA	CALL	38119T904	352	800	SH CALL	SOLE	800	0	0
D	GOLDMAN SACHS GROUP INC	STOCK	38141G104	105906	512538	SH	SOLE	512538	0	0
D	GOODYEAR TIRE & RUBR CO	STOCK	382550101	546	17500	SH	SOLE	17500	0	0
D	GOOGLE INC	STOCK	38259P508	92024	200856	SH	SOLE	200856	0	0
D	GRAFTECH INTL LTD	STOCK	384313102	1824	200900	SH	SOLE	200900	0	0
D	GREENHILL & CO INC	STOCK	395259104	1228	20000	SH	SOLE	20000	0	0
D	GROUP 1 AUTOMOTIVE INC	STOCK	398905109	3178	79900	SH	SOLE	79900	0	0
D	GROUPE DANONE	STOCK	399449107	357	10000	SH	SOLE	10000	0	0
D	GUESS INC	PUT	401617955	2025	500	SH PUT	SOLE	500	0	0
D	HALLIBURTON CO	STOCK	406216101	847	26694	SH	SOLE	26694	0	0
D	HALLIBURTON CO	CALL	406216901	3809	1200	SH CALL	SOLE	1200	0	0
D	HALLIBURTON CO	PUT	406216951	1270	400	SH PUT	SOLE	400	0	0
D	HALOZYME THERAPEUTICS INC	STOCK	40637H109	1773	220000	SH	SOLE	220000	0	0
D	HALOZYME THERAPEUTICS INC	CALL	40637H909	202	250	SH CALL	SOLE	250	0	0
D	HANSEN NAT CORP	STOCK	411310105	3548	93668	SH	SOLE	93668	0	0
D	HARRIS CORP DEL	STOCK	413875105	4076	80000	SH	SOLE	80000	0	0
D	HEALTH CARE PPTY INVS INC	STOCK	421915109	299	8300	SH	SOLE	8300	0	0
D	HEALTH CARE REIT INC	STOCK	42217K106	211	4800	SH	SOLE	4800	0	0
D	HEALTH NET INC	STOCK	42222G108	1345	25000	SH	SOLE	25000	0	0
D	HEINZ H J CO	CALL	423074903	4712	1000	SH CALL	SOLE	1000	0	0
D	HEINZ H J CO	STOCK	423074103	14438	306411	SH	SOLE	306411	0	0
D	HELIX ENERGY SOLUTIONS GRP I	STOCK	42330P107	2610	70000	SH	SOLE	70000	0	0
D	HELIX ENERGY SOLUTIONS GRP I	CALL	42330P907	1354	363	SH CALL	SOLE	363	0	0
D	HERBALIFE LTD	STOCK	G4412G101	392	10000	SH	SOLE	10000	0	0
D	HERSHEY CO	STOCK	42786G108	1367	25000	SH	SOLE	25000	0	0
D	HERSHEY CO	PUT	42786G958	4373	800	SH PUT	SOLE	800	0	0
D	HESS CORP	CALL	42809H907	2219	400	SH CALL	SOLE	400	0	0
D	HESS CORP	STOCK	42809H107	555	10000	SH	SOLE	10000	0	0
D	HEWITT ASSOCS INC	CALL	42822Q900	1754	600	SH CALL	SOLE	600	0	0
D	HEWITT ASSOCS INC	STOCK	42822Q100	582	19900	SH	SOLE	19900	0	0
D	HEWLETT PACKARD CO	STOCK	428236103	18829	469083	SH	SOLE	469083	0	0
D	HILTON HOTELS CORP	STOCK	432848109	8990	250000	SH	SOLE	250000	0	0

D HIMAX TECHNOLOGIES INC	STOCK	43289P106	1438	268342 SH	SOLE	268342	0	0
D HOME DEPOT INC	STOCK	437076102	603	16400 SH	SOLE	16400	0	0
D HOME DEPOT INC	CALL	437076902	4409	1200 SH CALL	SOLE	1200	0	0
D HOME INNS & HOTELS MGMT INC	STOCK	43713W107	2375	65350 SH	SOLE	65350	0	0
D HONDA MOTOR LTD	STOCK	438128308	2305	66100 SH	SOLE	66100	0	0
D HONEYWELL INTL INC	STOCK	438516106	1824	39600 SH	SOLE	39600	0	0
D HOSPIRA INC	CALL	441060900	888	217 SH CALL	SOLE	217	0	0
D HOSPIRA INC	STOCK	441060100	1227	30000 SH	SOLE	30000	0	0
D HUMAN GENOME SCIENCES INC	STOCK	444903108	531	50000 SH	SOLE	50000	0	0
D HUMAN GENOME SCIENCES INC	CALL	444903908	3398	3200 SH CALL	SOLE	3200	0	0
D HUMANA INC	PUT	444859952	3481	600 SH PUT	SOLE	600	0	0
D HUNT J B TRANS SVCS INC	STOCK	445658107	8405	320323 SH	SOLE	320323	0	0
D HUNTINGTON BANCSHARES INC	STOCK	446150104	367	16800 SH	SOLE	16800	0	0
D HUNTSMAN CORP	CALL	447011107	2291	1200 SH CALL	SOLE	1200	0	0
D HUNTSMAN CORP	STOCK	447011107	10500	550000 SH	SOLE	550000	0	0
D HUTCHINSON TECHNOLOGY INC	STOCK	448407106	46063	1972717 SH	SOLE	1972717	0	0
D HUTCHINSON TECHNOLOGY INC	CALL	448407906	7005	3000 SH CALL	SOLE	3000	0	0
D HUTCHISON TELECOMM INTL LTD	STOCK	44841T107	3477	113650 SH	SOLE	113650	0	0
D HYPERCOM CORP	STOCK	44913M105	3576	600000 SH	SOLE	600000	0	0
D I D SYSTEMS INC	STOCK	449489103	1402	116555 SH	SOLE	116555	0	0
D IAC INTERACTIVECORP	PUT	44919P950	14816	3929 SH PUT	SOLE	3929	0	0
D ICF INTL INC	STOCK	44925C103	10669	564500 SH	SOLE	564500	0	0
D ICICI BK LTD	PUT	45104G954	551	150 SH PUT	SOLE	150	0	0
D IDACORP INC	STOCK	451107106	2538	75000 SH	SOLE	75000	0	0
D IDAHO GEN MINES INC	STOCK	451272306	434	100000 SH	SOLE	100000	0	0
D IKANOS COMMUNICATIONS	STOCK	45173E105	6288	809306 SH	SOLE	809306	0	0
D IKON OFFICE SOLUTIONS INC	STOCK	451713101	417	29018 SH	SOLE	29018	0	0
D ILLUMINA INC	CALL	452327909	1465	500 SH CALL	SOLE	500	0	0
D IMAGE ENTMT INC	STOCK	452439201	98	23360 SH	SOLE	23360	0	0
D IMAX CORP	STOCK	45245E109	438	86925 SH	SOLE	86925	0	0
D IMCLONE SYS INC	PUT	45245W959	3995	980 SH PUT	SOLE	980	0	0
D IMCLONE SYS INC	CALL	45245W909	4485	1100 SH CALL	SOLE	1100	0	0
D IMMUNOMEDICS INC	CALL	452907908	403	880 SH CALL	SOLE	880	0	0
D IMMUNOMEDICS INC	STOCK	452907108	4651	1015458 SH	SOLE	1015458	0	0
D INDEVUS PHARMACEUTICALS INC	STOCK	454072109	2828	400000 SH	SOLE	400000	0	0
D INDYMAC BANCORP INC	PUT	456607950	2244	700 SH PUT	SOLE	700	0	0
D INFINEON TECHNOLOGIES AG	STOCK	45662N103	26458	1699305 SH	SOLE	1699305	0	0
D INFOCROSSING INC	STOCK	45664X109	1933	130000 SH	SOLE	130000	0	0
D INFOCUS CORP	STOCK	45665B106	1075	383813 SH	SOLE	383813	0	0
D INFORMATICA CORP	CALL	45666Q902	1007	750 SH CALL	SOLE	750	0	0
D INFORMATICA CORP	STOCK	45666Q102	679	50552 SH	SOLE	50552	0	0
D INFOSYS TECHNOLOGIES LTD	STOCK	456788108	922	18350 SH	SOLE	18350	0	0
D INFOSYS TECHNOLOGIES LTD	PUT	456788958	9090	1809 SH PUT	SOLE	1809	0	0
D INFRASOURCE SVCS INC	STOCK	45684P102	763	25000 SH	SOLE	25000	0	0
D INGERSOLL-RAND COMPANY LTD	STOCK	64776G101	10829	249700 SH	SOLE	249700	0	0
D INNOVO GROUP INC	STOCK	457954600	3060	2807290 SH	SOLE	2807290	0	0
D INPHONIC INC	CALL	45772G905	981	900 SH CALL	SOLE	900	0	0
D INPHONIC INC	STOCK	45772G105	11109	1019169 SH	SOLE	1019169	0	0
D INPUT/OUTPUT INC	STOCK	457652105	5238	380100 SH	SOLE	380100	0	0
D INSPIRE PHARMACEUTICALS INC	STOCK	457733103	1682	295000 SH	SOLE	295000	0	0
D INTEGRAL SYS INC MD	STOCK	45810H107	2900	120000 SH	SOLE	120000	0	0
D INTEGRYS ENERGY GROUP INC	STOCK	45822P105	17486	315000 SH	SOLE	315000	0	0
D INTEL CORP	STOCK	458140100	1681	87856 SH	SOLE	87856	0	0
D INTEL CORP	CALL	458140900	17504	9150 SH CALL	SOLE	9150	0	0
D INTEL CORP	PUT	458140950	1530	800 SH PUT	SOLE	800	0	0
D INTERCONTINENTALEXCHANGE INC	STOCK	45865V100	1352	11064 SH	SOLE	11064	0	0
D INTERDIGITAL COMMUNICATIONS	PUT	45866A955	8155	2575 SH PUT	SOLE	2575	0	0
D INTERFACE INC	STOCK	458665106	481	30076 SH	SOLE	30076	0	0
D INTERMEC INC	CALL	458786900	3351	1500 SH CALL	SOLE	1500	0	0
D INTERMEC INC	PUT	458786950	4468	2000 SH PUT	SOLE	2000	0	0
D INTERMUNE INC	CALL	45884X903	1480	600 SH CALL	SOLE	600	0	0
D INTERNATIONAL BUSINESS MACHS	PUT	459200951	219079	23242 SH PUT	SOLE	23242	0	0
D INTERNATIONAL GAME TECHNOLOG	CALL	459902902	4038	1000 SH CALL	SOLE	1000	0	0
D INTERNATIONAL GAME TECHNOLOG	STOCK	459902102	14540	360085 SH	SOLE	360085	0	0
D INTERNATIONAL RECTIFIER CORP	CALL	460254905	6075	1590 SH CALL	SOLE	1590	0	0
D INTERNATIONAL RECTIFIER CORP	PUT	460254955	5498	1439 SH PUT	SOLE	1439	0	0
D INTERNET CAP GROUP INC	STOCK	46059C205	1070	100000 SH	SOLE	100000	0	0
D INTERNET HOLDRS TR	STOCK	46059W102	11158	200000 SH	SOLE	200000	0	0
D INTERNET INFRASTRUCTR HOLDS	STOCK	46059V104	1323	257900 SH	SOLE	257900	0	0
D INTEROIL CORP	STOCK	460951106	2097	78850 SH	SOLE	78850	0	0
D INTEROIL CORP	CALL	460951906	3562	1339 SH CALL	SOLE	1339	0	0
D INTERPUBLIC GROUP COS INC	STOCK	460690100	1826	148300 SH	SOLE	148300	0	0
D INTERVOICE INC NEW	STOCK	461142101	144	21670 SH	SOLE	21670	0	0
D INTERWOVEN INC	PUT	46114T958	845	500 SH PUT	SOLE	500	0	0
D INTEVAC INC	PUT	461148958	2637	1000 SH PUT	SOLE	1000	0	0
D INTL PAPER CO	STOCK	460146103	2184	60000 SH	SOLE	60000	0	0
D INTL PAPER CO	CALL	460146903	7826	2150 SH CALL	SOLE	2150	0	0
D INTL SECS EXCHANGE HLDGS INC	STOCK	46031W204	10277	210600 SH	SOLE	210600	0	0
D INTUIT	CALL	461202903	2736	1000 SH CALL	SOLE	1000	0	0
D INTUIT	STOCK	461202103	2760	100886 SH	SOLE	100886	0	0
D INVERNESS MED INNOVATIONS IN	STOCK	46126P106	2189	50000 SH	SOLE	50000	0	0
D INVITROGEN CORP	CALL	46185R900	3183	500 SH CALL	SOLE	500	0	0
D IONATRON INC	STOCK	462070103	10887	2336300 SH	SOLE	2336300	0	0
D IPASS INC	STOCK	46261V108	2016	400837 SH	SOLE	400837	0	0
D IPC HLDGS LTD	STOCK	64933P101	2885	100000 SH	SOLE	100000	0	0
D IPG PHOTONICS CORP	STOCK	44980X109	1922	100100 SH	SOLE	100100	0	0
D IPSCO INC	STOCK	462622101	307	2337 SH	SOLE	2337	0	0
D IROBOT CORP	STOCK	462726100	327	25037 SH	SOLE	25037	0	0
D ISHARES INC	PUT	464286953	984	200 SH PUT	SOLE	200	0	0
D ISHARES INC	PUT	464286953	16381	10200 SH PUT	SOLE	10200	0	0
D ISHARES INC	STOCK	464286830	4332	400000 SH	SOLE	400000	0	0
D ISHARES INC	PUT	464286953	1442	500 SH PUT	SOLE	500	0	0

D	ISHARES TR	PUT	464287951	8005	1200 SH PUT	SOLE	1200	0	0
D	ISHARES TR	PUT	464287951	19065	2500 SH PUT	SOLE	2500	0	0
D	ISHARES TR	PUT	464287951	8196	1200 SH PUT	SOLE	1200	0	0
D	ISHARES TR	PUT	464287951	44539	5500 SH PUT	SOLE	5500	0	0
D	ISHARES TR	PUT	464287951	123789	15569 SH PUT	SOLE	15569	0	0
D	ISHARES TR	PUT	464287951	37511	4950 SH PUT	SOLE	4950	0	0
D	ISHARES TR	PUT	464287951	25188	2459 SH PUT	SOLE	2459	0	0
D	ISHARES TR	PUT	464287951	8524	1000 SH PUT	SOLE	1000	0	0
D	ISHARES TR	CALL	464287901	8524	1000 SH CALL	SOLE	1000	0	0
D	ISHARES TR	CALL	464287901	1932	243 SH CALL	SOLE	243	0	0
D	ISHARES TR	CALL	464287901	15156	2000 SH CALL	SOLE	2000	0	0
D	ISHARES TR	PUT	464287951	1076	125 SH PUT	SOLE	125	0	0
D	ISHARES TR	PUT	464287951	22135	1900 SH PUT	SOLE	1900	0	0
D	ISHARES TR	STOCK	464287432	3370	38178 SH	SOLE	38178	0	0
D	ISILON SYS INC	STOCK	46432L104	14741	911654 SH	SOLE	911654	0	0
D	ISIS PHARMACEUTICALS INC	CALL	464330909	3940	4250 SH CALL	SOLE	4250	0	0
D	ISIS PHARMACEUTICALS INC	STOCK	464330109	2781	300000 SH	SOLE	300000	0	0
D	ITC HLDGS CORP	STOCK	465685105	8688	200700 SH	SOLE	200700	0	0
D	ITT EDUCATIONAL SERVICES INC	PUT	45068B959	4075	500 SH PUT	SOLE	500	0	0
D	IXIA	STOCK	45071R109	279	30000 SH	SOLE	30000	0	0
D	J2 GLOBAL COMMUNICATIONS INC	STOCK	46626E205	832	30000 SH	SOLE	30000	0	0
D	JA SOLAR HOLDINGS CO LTD	STOCK	466090107	4126	228100 SH	SOLE	228100	0	0
D	JABIL CIRCUIT INC	PUT	466313953	7018	3278 SH PUT	SOLE	3278	0	0
D	JACOBS ENGR GROUP INC DEL	PUT	469814957	1866	400 SH PUT	SOLE	400	0	0
D	JAMBA INC	STOCK	47023A101	1561	170000 SH	SOLE	170000	0	0
D	JDS UNIPHASE CORP	STOCK	46612J507	20410	1340101 SH	SOLE	1340101	0	0
D	JDS UNIPHASE CORP	CALL	46612J907	7128	4680 SH CALL	SOLE	4680	0	0
D	JETBLUE AWYS CORP	STOCK	477143101	7027	610519 SH	SOLE	610519	0	0
D	JETBLUE AWYS CORP	CALL	477143901	3660	3180 SH CALL	SOLE	3180	0	0
D	JOHNSON Ctls INC	PUT	478366957	7097	750 SH PUT	SOLE	750	0	0
D	JONES APPAREL GROUP INC	STOCK	480074103	375	12200 SH	SOLE	12200	0	0
D	JONES SODA CO	STOCK	48023P106	708	35000 SH	SOLE	35000	0	0
D	JOS A BANK CLOTHIERS INC	STOCK	480838101	1406	39767 SH	SOLE	39767	0	0
D	JOY GLOBAL INC	STOCK	481165108	6038	140738 SH	SOLE	140738	0	0
D	JP MORGAN CHASE & CO	STOCK	46625H100	5211	107715 SH	SOLE	107715	0	0
D	JUNIPER NETWORKS INC	STOCK	48203R104	2055	104422 SH	SOLE	104422	0	0
D	K V PHARMACEUTICAL CO	STOCK	482740206	8584	347120 SH	SOLE	347120	0	0
D	K2 INC	STOCK	482732104	6045	500000 SH	SOLE	500000	0	0
D	KEANE INC	STOCK	486665102	4821	354977 SH	SOLE	354977	0	0
D	KELLOGG CO	STOCK	487836108	1286	25000 SH	SOLE	25000	0	0
D	KEMET CORP	STOCK	488360108	1836	240000 SH	SOLE	240000	0	0
D	KENDLE INTERNATIONAL INC	STOCK	48880L107	888	25000 SH	SOLE	25000	0	0
D	KENNAMETAL INC	STOCK	489170100	10195	150788 SH	SOLE	150788	0	0
D	KFORCE INC	STOCK	493732101	1652	120000 SH	SOLE	120000	0	0
D	KINETIC CONCEPTS INC	PUT	49460W958	5064	1000 SH PUT	SOLE	1000	0	0
D	KING PHARMACEUTICALS INC	STOCK	495582108	12676	644452 SH	SOLE	644452	0	0
D	KING PHARMACEUTICALS INC	CALL	495582908	18686	9500 SH CALL	SOLE	9500	0	0
D	KLA-TENCOR CORP	STOCK	482480100	46207	866601 SH	SOLE	866601	0	0
D	KLA-TENCOR CORP	PUT	482480950	11304	2120 SH PUT	SOLE	2120	0	0
D	KNOT INC	STOCK	499184109	215	10000 SH	SOLE	10000	0	0
D	KODIAK OIL & GAS CORP	STOCK	50015Q100	2850	545896 SH	SOLE	545896	0	0
D	KOHL'S CORP	STOCK	500255104	6470	84455 SH	SOLE	84455	0	0
D	KOMAG INC	CALL	500453904	6742	2060 SH CALL	SOLE	2060	0	0
D	KOMAG INC	PUT	500453954	2455	750 SH PUT	SOLE	750	0	0
D	KOMAG INC	STOCK	500453204	17767	542823 SH	SOLE	542823	0	0
D	KONINKLIJKE PHILIPS ELECTRS	STOCK	500472303	1905	50000 SH	SOLE	50000	0	0
D	KOPIN CORP	STOCK	500600101	254	75000 SH	SOLE	75000	0	0
D	KRISPY KREME DOUGHNUTS INC	STOCK	501014104	5095	500001 SH	SOLE	500001	0	0
D	KROGER CO	STOCK	501044101	531	18780 SH	SOLE	18780	0	0
D	KRONOS INC	STOCK	501052104	519	9700 SH	SOLE	9700	0	0
D	K-SWISS INC	STOCK	482686102	676	25000 SH	SOLE	25000	0	0
D	KULICKE & SOFFA INDS INC	STOCK	501242101	693	74910 SH	SOLE	74910	0	0
D	KYPHON INC	PUT	501577950	4514	1000 SH PUT	SOLE	1000	0	0
D	L-3 COMMUNICATIONS HLDGS INC	CALL	502424904	2624	300 SH CALL	SOLE	300	0	0
D	LABORATORY CORP AMER HLDGS	PUT	50540R959	7263	1000 SH PUT	SOLE	1000	0	0
D	LAM RESEARCH CORP	STOCK	512807108	35397	747726 SH	SOLE	747726	0	0
D	LANCE INC	STOCK	514606102	607	30000 SH	SOLE	30000	0	0
D	LANDAMERICA FINL GROUP INC	STOCK	514936103	2350	31801 SH	SOLE	31801	0	0
D	LAS VEGAS SANDS CORP	CALL	517834907	1732	200 SH CALL	SOLE	200	0	0
D	LASALLE HOTEL PPTYS	STOCK	517942108	1854	40000 SH	SOLE	40000	0	0
D	LAWSON SOFTWARE INC NEW	STOCK	52078P102	10889	1345935 SH	SOLE	1345935	0	0
D	LCA-VISION INC	PUT	501803958	2471	600 SH PUT	SOLE	600	0	0
D	LEADIS TECHNOLOGY INC	STOCK	52171N103	4555	1138820 SH	SOLE	1138820	0	0
D	LEAP WIRELESS INTL INC	PUT	521863958	3959	600 SH PUT	SOLE	600	0	0
D	LEHMAN BROS HLDGS INC	PUT	524908950	5606	800 SH PUT	SOLE	800	0	0
D	LEVEL 3 COMMUNICATIONS INC	STOCK	52729N100	19380	3176999 SH	SOLE	3176999	0	0
D	LEXMARK INTL NEW	STOCK	529771107	1398	23920 SH	SOLE	23920	0	0
D	LIBERTY GLOBAL INC	STOCK	530555101	659	20000 SH	SOLE	20000	0	0
D	LIBERTY MEDIA HLDG CORP	STOCK	53071M104	1429	60000 SH	SOLE	60000	0	0
D	LIFE TIME FITNESS INC	STOCK	53217R207	809	15727 SH	SOLE	15727	0	0
D	LIFECELL CORP	PUT	531927951	4994	2000 SH PUT	SOLE	2000	0	0
D	LIFEWAY FOODS INC	STOCK	531914109	270	30000 SH	SOLE	30000	0	0
D	LIMITED BRANDS INC	STOCK	532716107	15920	610900 SH	SOLE	610900	0	0
D	LIMITED BRANDS INC	CALL	532716907	3127	1200 SH CALL	SOLE	1200	0	0
D	LINCOLN NATL CORP IND	STOCK	534187109	2034	30000 SH	SOLE	30000	0	0
D	LINEAR TECHNOLOGY CORP	CALL	535678906	3535	1119 SH CALL	SOLE	1119	0	0
D	LINEAR TECHNOLOGY CORP	PUT	535678956	3159	1000 SH PUT	SOLE	1000	0	0
D	LITHIA MTRS INC	STOCK	536797103	1129	41200 SH	SOLE	41200	0	0
D	LIZ CLAIBORNE INC	STOCK	539320101	2670	62322 SH	SOLE	62322	0	0
D	LOEWS CORP	STOCK	540424207	2091	27656 SH	SOLE	27656	0	0
D	LOGITECH INTL S A	CALL	H50430902	2783	1000 SH CALL	SOLE	1000	0	0
D	LONGS DRUG STORES CORP	PUT	543162951	4648	900 SH PUT	SOLE	900	0	0

D	LOWES COS INC	STOCK	548661107	5467	173600	SH	SOLE	173600	0	0
D	LSI LOGIC CORP	STOCK	502161102	2950	282530	SH	SOLE	282530	0	0
D	LTX CORP	STOCK	502392103	840	137200	SH	SOLE	137200	0	0
D	LUFKIN INDS INC	STOCK	549764108	2994	53297	SH	SOLE	53297	0	0
D	LYONDELL CHEMICAL CO	PUT	552078957	1499	500	SH PUT	SOLE	500	0	0
D	MACERICH CO	STOCK	554382101	332	3600	SH	SOLE	3600	0	0
D	MACK CALI RLTY CORP	STOCK	554489104	257	5400	SH	SOLE	5400	0	0
D	MAGAL SECURITY SYS LTD	STOCK	M6786D104	3550	322422	SH	SOLE	322422	0	0
D	MAGNA ENMTT CORP	STOCK	559211107	159	43700	SH	SOLE	43700	0	0
D	MAGNA INTL INC	STOCK	559222401	3380	45000	SH	SOLE	45000	0	0
D	MAJESCO ENTERTAINMENT CO	STOCK	560690208	216	144110	SH	SOLE	144110	0	0
D	MANHATTAN ASSOCS INC	PUT	562750959	3807	1388	SH PUT	SOLE	1388	0	0
D	MANNATECH INC	STOCK	563771104	241	15000	SH	SOLE	15000	0	0
D	MARATHON OIL CORP	CALL	565849906	5930	600	SH CALL	SOLE	600	0	0
D	MARCHEX INC	STOCK	56624R108	1061	69251	SH	SOLE	69251	0	0
D	MARSH & MCLENNAN COS INC	STOCK	571748102	879	30000	SH	SOLE	30000	0	0
D	MARSH & MCLENNAN COS INC	PUT	571748952	1757	600	SH PUT	SOLE	600	0	0
D	MARVELL TECHNOLOGY GROUP LTD	PUT	G5876H955	6724	4000	SH PUT	SOLE	4000	0	0
D	MARVELL TECHNOLOGY GROUP LTD	CALL	G5876H905	30203	17967	SH CALL	SOLE	17967	0	0
D	MARVELL TECHNOLOGY GROUP LTD	STOCK	G5876H105	39250	2334895	SH	SOLE	2334895	0	0
D	MASSEY ENERGY CORP	STOCK	576206106	2399	100000	SH	SOLE	100000	0	0
D	MASSEY ENERGY CORP	CALL	576206906	2879	1200	SH CALL	SOLE	1200	0	0
D	MASTEC INC	STOCK	576323109	2202	200000	SH	SOLE	200000	0	0
D	MASTERCARD INC	PUT	57636Q954	4250	400	SH PUT	SOLE	400	0	0
D	MASTERCARD INC	STOCK	57636Q104	3187	30000	SH	SOLE	30000	0	0
D	MATTSON TECHNOLOGY INC	STOCK	577223100	911	100100	SH	SOLE	100100	0	0
D	MAXIM INTEGRATED PRODS INC	STOCK	57772K101	60311	2051392	SH	SOLE	2051392	0	0
D	MAXIM INTEGRATED PRODS INC	CALL	57772K901	11451	3895	SH CALL	SOLE	3895	0	0
D	MBIA INC	STOCK	55262C100	3929	60000	SH	SOLE	60000	0	0
D	MBIA INC	PUT	55262C950	3275	500	SH PUT	SOLE	500	0	0
D	MCAFFEE INC	PUT	579064956	814	280	SH PUT	SOLE	280	0	0
D	MCDERMOTT INTL INC	STOCK	580037109	16408	335000	SH	SOLE	335000	0	0
D	MCDONALDS CORP	STOCK	580135101	2929	65009	SH	SOLE	65009	0	0
D	MCF CORP	STOCK	580395309	81	18316	SH	SOLE	18316	0	0
D	MDS INC	STOCK	55269E302	12564	664400	SH	SOLE	664400	0	0
D	MEDAREX INC	CALL	583916901	8670	6700	SH CALL	SOLE	6700	0	0
D	MEDCO HEALTH SOLUTIONS INC	PUT	58405U952	5077	700	SH PUT	SOLE	700	0	0
D	MEDIMMUNE INC	STOCK	584699102	943	25905	SH	SOLE	25905	0	0
D	MEDIMMUNE INC	CALL	584699902	25582	7030	SH CALL	SOLE	7030	0	0
D	MEDIMMUNE INC	PUT	584699952	728	200	SH PUT	SOLE	200	0	0
D	MEDIS TECHNOLOGIES LTD	CALL	58500P907	2156	1275	SH CALL	SOLE	1275	0	0
D	MEDTRONIC INC	STOCK	585055106	240	4900	SH	SOLE	4900	0	0
D	MELCO PBL ENTMT LTD	STOCK	585464100	404	25000	SH	SOLE	25000	0	0
D	MELLANOX TECHNOLOGIES LTD	STOCK	M51363113	7602	520695	SH	SOLE	520695	0	0
D	MELLON FINL CORP	STOCK	58551A108	6471	150000	SH	SOLE	150000	0	0
D	MELLON FINL CORP	CALL	58551A908	4314	1000	SH CALL	SOLE	1000	0	0
D	MEMC ELECTR MATLS INC	STOCK	552715104	3629	59900	SH	SOLE	59900	0	0
D	MEMC ELECTR MATLS INC	PUT	552715954	4846	800	SH PUT	SOLE	800	0	0
D	MEMORY PHARMACEUTICALS CORP	STOCK	58606R403	504	300000	SH	SOLE	300000	0	0
D	MERCK & CO INC	STOCK	589331107	7958	180175	SH	SOLE	180175	0	0
D	MERCK & CO INC	CALL	589331907	3313	750	SH CALL	SOLE	750	0	0
D	MERIX CORP	STOCK	590049102	206	25000	SH	SOLE	25000	0	0
D	MERRILL LYNCH & CO INC	STOCK	590188108	9131	111800	SH	SOLE	111800	0	0
D	METABOLIX INC	STOCK	591018809	6726	404465	SH	SOLE	404465	0	0
D	METALLINE MINING INC	STOCK	591257100	228	83738	SH	SOLE	83738	0	0
D	METLIFE INC	STOCK	59156R108	12744	201800	SH	SOLE	201800	0	0
D	MGI PHARMA INC	CALL	552880906	5842	2600	SH CALL	SOLE	2600	0	0
D	MGIC INVT CORP WIS	CALL	552848903	2946	500	SH CALL	SOLE	500	0	0
D	MGIC INVT CORP WIS	STOCK	552848103	3535	60000	SH	SOLE	60000	0	0
D	MICREL INC	STOCK	594793101	10849	984512	SH	SOLE	984512	0	0
D	MICROCHIP TECHNOLOGY INC	PUT	595017954	7106	2000	SH PUT	SOLE	2000	0	0
D	MICRON TECHNOLOGY INC	CALL	595112903	906	750	SH CALL	SOLE	750	0	0
D	MICRON TECHNOLOGY INC	STOCK	595112103	8265	684212	SH	SOLE	684212	0	0
D	MICROS SYS INC	STOCK	594901100	2010	37225	SH	SOLE	37225	0	0
D	MICROSEMI CORP	STOCK	595137100	12289	590552	SH	SOLE	590552	0	0
D	MICROSEMI CORP	CALL	595137900	8376	4025	SH CALL	SOLE	4025	0	0
D	MICROSOFT CORP	STOCK	594918104	29495	1058304	SH	SOLE	1058304	0	0
D	MICROSTRATEGY INC	PUT	594972958	4019	318	SH PUT	SOLE	318	0	0
D	MICROTUNE INC DEL	STOCK	59514P109	1367	331800	SH	SOLE	331800	0	0
D	MIDCAP SPDR TR	PUT	595635953	98152	6350	SH PUT	SOLE	6350	0	0
D	MILLENNIUM PHARMACEUTICALS I	PUT	599902953	5029	4427	SH PUT	SOLE	4427	0	0
D	MIPS TECHNOLOGIES INC	STOCK	604567107	359	40200	SH	SOLE	40200	0	0
D	MIRANT CORP NEW	STOCK	60467R100	1618	40000	SH	SOLE	40000	0	0
D	MIVA INC	STOCK	55311R108	423	110100	SH	SOLE	110100	0	0
D	MOHAWK INDS INC	STOCK	608190104	205	2500	SH	SOLE	2500	0	0
D	MOMENTA PHARMACEUTICALS INC	PUT	60877T950	10886	8400	SH PUT	SOLE	8400	0	0
D	MOMENTA PHARMACEUTICALS INC	CALL	60877T900	1296	1000	SH CALL	SOLE	1000	0	0
D	MONOLITHIC PWR SYS INC	STOCK	609839105	1747	135450	SH	SOLE	135450	0	0
D	MONSANTO CO NEW	CALL	61166W901	1649	300	SH CALL	SOLE	300	0	0
D	MONSANTO CO NEW	STOCK	61166W101	3979	72400	SH	SOLE	72400	0	0
D	MONSTER WORLDWIDE INC	STOCK	611742107	3212	67800	SH	SOLE	67800	0	0
D	MONSTER WORLDWIDE INC	CALL	611742907	4737	1000	SH CALL	SOLE	1000	0	0
D	MORGAN STANLEY	CALL	617446908	11814	1500	SH CALL	SOLE	1500	0	0
D	MORGAN STANLEY	STOCK	617446448	17327	220000	SH	SOLE	220000	0	0
D	MOSAIC CO	CALL	61945A907	1333	500	SH CALL	SOLE	500	0	0
D	MOTOROLA INC	CALL	620076909	18200	10300	SH CALL	SOLE	10300	0	0
D	MOTOROLA INC	PUT	620076959	8816	4989	SH PUT	SOLE	4989	0	0
D	MSC SOFTWARE CORP	STOCK	553531104	212	15401	SH	SOLE	15401	0	0
D	MUELLER WTR PRODS INC	CALL	624758908	2072	1500	SH CALL	SOLE	1500	0	0
D	MUELLER WTR PRODS INC	STOCK	624758108	1933	140000	SH	SOLE	140000	0	0
D	MULTI FINELINE ELECTRONIX IN	STOCK	62541B101	7511	489303	SH	SOLE	489303	0	0
D	MULTI FINELINE ELECTRONIX IN	CALL	62541B901	3838	2500	SH CALL	SOLE	2500	0	0

D	MULTIMEDIA GAMES INC	STOCK	625453105	1428	120000	SH	SOLE	120000	0	0
D	MYERS INDS INC	STOCK	628464109	747	40000	SH	SOLE	40000	0	0
D	MYLAN LABS INC	CALL	628530907	29133	13781	SH CALL	SOLE	13781	0	0
D	MYLAN LABS INC	STOCK	628530107	12870	608800	SH	SOLE	608800	0	0
D	NABORS INDUSTRIES LTD	CALL	G6359F903	4450	1500	SH CALL	SOLE	1500	0	0
D	NAPCO SEC SYS INC	STOCK	630402105	5305	1001027	SH	SOLE	1001027	0	0
D	NAPSTER INC	STOCK	630797108	580	140000	SH	SOLE	140000	0	0
D	NASDAQ STOCK MARKET INC	STOCK	631103108	5294	180000	SH	SOLE	180000	0	0
D	NATCO GROUP INC	STOCK	63227W203	1365	40000	SH	SOLE	40000	0	0
D	NATIONAL CINEMEDIA INC	STOCK	635309107	590	22100	SH	SOLE	22100	0	0
D	NATIONAL SEMICONDUCTOR CORP	STOCK	637640103	43042	1782998	SH	SOLE	1782998	0	0
D	NATIONAL SEMICONDUCTOR CORP	CALL	637640903	3621	1500	SH CALL	SOLE	1500	0	0
D	NATIONSHALTH INC	STOCK	63860C100	1664	1116476	SH	SOLE	1116476	0	0
D	NAVTEQ CORP	STOCK	63936L100	348	10100	SH	SOLE	10100	0	0
D	NCR CORP NEW	STOCK	62886E108	2833	59300	SH	SOLE	59300	0	0
D	NESS TECHNOLOGIES INC	STOCK	64104X108	22683	1774885	SH	SOLE	1774885	0	0
D	NET 1 UEPS TECHNOLOGIES INC	STOCK	64107N206	17881	718682	SH	SOLE	718682	0	0
D	NET SERVICOS DE COMUNICACAO	STOCK	64109T201	870	64360	SH	SOLE	64360	0	0
D	NETLOGIC MICROSYSTEMS INC	PUT	64118B950	9317	3500	SH PUT	SOLE	3500	0	0
D	NETWORK APPLIANCE INC	STOCK	64120L104	1132	31003	SH	SOLE	31003	0	0
D	NETWORK APPLIANCE INC	PUT	64120L954	5478	1500	SH PUT	SOLE	1500	0	0
D	NEVSUN RES LTD	STOCK	64156L101	630	300000	SH	SOLE	300000	0	0
D	NEW JERSEY RES	STOCK	646025106	5711	114100	SH	SOLE	114100	0	0
D	NEW ORIENTAL ED & TECH GRP I	STOCK	647581107	942	23250	SH	SOLE	23250	0	0
D	NEWMONT MINING CORP	CALL	651639906	4829	1150	SH CALL	SOLE	1150	0	0
D	NEWSTAR FINANCIAL INC	STOCK	65251F105	3000	179000	SH	SOLE	179000	0	0
D	NEWTEK BUSINESS SVCS INC	STOCK	652526104	374	184069	SH	SOLE	184069	0	0
D	NEXTEST SYS CORP	STOCK	653339101	420	30000	SH	SOLE	30000	0	0
D	NII HLDGS INC	STOCK	62913F201	13921	187664	SH	SOLE	187664	0	0
D	NIPPON TELEG & TEL CORP	STOCK	654624105	1585	60000	SH	SOLE	60000	0	0
D	NOBLE ENERGY INC	STOCK	655044105	5369	90000	SH	SOLE	90000	0	0
D	NOKIA CORP	PUT	654902954	5730	2500	SH PUT	SOLE	2500	0	0
D	NORDSTROM INC	STOCK	655664100	13860	261814	SH	SOLE	261814	0	0
D	NORDSTROM INC	PUT	655664950	3971	750	SH PUT	SOLE	750	0	0
D	NORTHSTAR NEUROSCIENCE INC	STOCK	66704V101	982	76714	SH	SOLE	76714	0	0
D	NOVARTIS A G	STOCK	66987V109	3070	56200	SH	SOLE	56200	0	0
D	NOVARTIS A G	CALL	66987V909	2732	500	SH CALL	SOLE	500	0	0
D	NOVAVAX INC	STOCK	670002104	251	96819	SH	SOLE	96819	0	0
D	NOVELLUS SYS INC	PUT	670008951	33547	10477	SH PUT	SOLE	10477	0	0
D	NRG ENERGY INC	STOCK	629377508	3609	50100	SH	SOLE	50100	0	0
D	NSTAR	STOCK	67019E107	3533	100600	SH	SOLE	100600	0	0
D	NUCOR CORP	PUT	670346955	21584	3314	SH PUT	SOLE	3314	0	0
D	NUTRI SYS INC NEW	CALL	67069D908	5765	1100	SH CALL	SOLE	1100	0	0
D	NUTRI SYS INC NEW	STOCK	67069D108	23945	456887	SH	SOLE	456887	0	0
D	NVIDIA CORP	STOCK	67066G104	32868	1142026	SH	SOLE	1142026	0	0
D	NVIDIA CORP	CALL	67066G904	11512	4000	SH CALL	SOLE	4000	0	0
D	NYMEX HOLDINGS INC	STOCK	62948N104	13630	100400	SH	SOLE	100400	0	0
D	NYMEX HOLDINGS INC	CALL	62948N904	5430	400	SH CALL	SOLE	400	0	0
D	O REILLY AUTOMOTIVE INC	STOCK	686091109	2317	70000	SH	SOLE	70000	0	0
D	OCCIDENTAL PETE CORP DEL	STOCK	674599105	1233	25000	SH	SOLE	25000	0	0
D	OCCIDENTAL PETE CORP DEL	PUT	674599955	1479	300	SH PUT	SOLE	300	0	0
D	ODYSSEY MARINE EXPLORATION I	STOCK	676118102	2186	600520	SH	SOLE	600520	0	0
D	OFFICE DEPOT INC	STOCK	676220106	7319	208272	SH	SOLE	208272	0	0
D	OFFICE DEPOT INC	CALL	676220906	1757	500	SH CALL	SOLE	500	0	0
D	OGE ENERGY CORP	STOCK	670837103	7760	200000	SH	SOLE	200000	0	0
D	OIL SVC HOLDRS TR	PUT	678002956	29873	2050	SH PUT	SOLE	2050	0	0
D	OLD DOMINION FGHT LINES INC	STOCK	679580100	9667	335534	SH	SOLE	335534	0	0
D	OLD REP INTL CORP	STOCK	680223104	1327	60000	SH	SOLE	60000	0	0
D	OM GROUP INC	STOCK	670872100	1117	25000	SH	SOLE	25000	0	0
D	OMNIVISION TECHNOLOGIES INC	STOCK	682128103	3104	239511	SH	SOLE	239511	0	0
D	ON SEMICONDUCTOR CORP	STOCK	682189105	2072	232237	SH	SOLE	232237	0	0
D	ONEBEACON INSURANCE GROUP LT	STOCK	G67742109	1993	79700	SH	SOLE	79700	0	0
D	ONYX PHARMACEUTICALS INC	CALL	683399909	3478	1400	SH CALL	SOLE	1400	0	0
D	OPEN TEXT CORP	STOCK	683715106	901	41042	SH	SOLE	41042	0	0
D	OPENTV CORP	STOCK	G67543101	392	160000	SH	SOLE	160000	0	0
D	OPENWAVE SYS INC	STOCK	683718308	8315	1020241	SH	SOLE	1020241	0	0
D	OPLINK COMMUNICATIONS INC	STOCK	68375Q403	4067	226300	SH	SOLE	226300	0	0
D	OPSWARE INC	CALL	68383A901	3625	5000	SH CALL	SOLE	5000	0	0
D	OPSWARE INC	STOCK	68383A101	10602	1462356	SH	SOLE	1462356	0	0
D	OPTICAL COMMUNICATION PRODS	STOCK	68382T101	650	485326	SH	SOLE	485326	0	0
D	OPTIMAL GROUP INC	STOCK	68388R208	4536	540700	SH	SOLE	540700	0	0
D	ORACLE CORP	CALL	68389X905	1813	1000	SH CALL	SOLE	1000	0	0
D	ORACLE CORP	STOCK	68389X105	5540	305545	SH	SOLE	305545	0	0
D	ORCKIT COMMUNICATIONS LTD	STOCK	M7531S206	580	56900	SH	SOLE	56900	0	0
D	ORIGIN AGRITECH LIMITED	STOCK	G67828106	6586	739980	SH	SOLE	739980	0	0
D	OSHKOSH TRUCK CORP	STOCK	688239201	9805	185000	SH	SOLE	185000	0	0
D	OSI PHARMACEUTICALS INC	CALL	671040903	3300	1000	SH CALL	SOLE	1000	0	0
D	OSI PHARMACEUTICALS INC	STOCK	671040103	6864	207990	SH	SOLE	207990	0	0
D	OSI SYSTEMS INC	STOCK	671044105	2060	77917	SH	SOLE	77917	0	0
D	OVERLAND STORAGE INC	STOCK	690310107	1868	451150	SH	SOLE	451150	0	0
D	P F CHANGS CHINA BISTRO INC	PUT	69333Y958	3769	900	SH PUT	SOLE	900	0	0
D	PACCAR INC	PUT	693718958	3670	500	SH PUT	SOLE	500	0	0
D	PACER INTL INC TENN	STOCK	69373H106	5782	214622	SH	SOLE	214622	0	0
D	PACIFIC SUNWEAR CALIF INC	STOCK	694873100	1535	73700	SH	SOLE	73700	0	0
D	PACKETEER INC	STOCK	695210104	2575	207293	SH	SOLE	207293	0	0
D	PACTIV CORP	STOCK	695257105	2699	80000	SH	SOLE	80000	0	0
D	PALM INC NEW	CALL	696643905	363	200	SH CALL	SOLE	200	0	0
D	PALM INC NEW	STOCK	696643105	74072	4085594	SH	SOLE	4085594	0	0
D	PANTRY INC	STOCK	698657103	10289	227533	SH	SOLE	227533	0	0
D	PAR PHARMACEUTICAL COS INC	CALL	69888P906	7915	3151	SH CALL	SOLE	3151	0	0
D	PARALLEL PETE CORP DEL	STOCK	699157103	1148	50000	SH	SOLE	50000	0	0
D	PATNI COMPUTER SYS	STOCK	703248203	1845	80000	SH	SOLE	80000	0	0

D	PDL BIOPHARMA INC	CALL	69329y904	7595	3500	SH	CALL	SOLE	3500	0	0
D	PEABODY ENERGY CORP	STOCK	704549104	378	9400	SH		SOLE	9400	0	0
D	PEGASYSYSTEMS INC	STOCK	705573103	333	36000	SH		SOLE	36000	0	0
D	PENNEY J C INC	PUT	708160956	12817	1560	SH	PUT	SOLE	1560	0	0
D	PENWEST PHARMACEUTICALS CO	CALL	709754905	20823	20658	SH	CALL	SOLE	20658	0	0
D	PENWEST PHARMACEUTICALS CO	STOCK	709754105	25148	2494883	SH		SOLE	2494883	0	0
D	PEOPLESUPPORT INC	STOCK	712714302	303	26500	SH		SOLE	26500	0	0
D	PEPSICO INC	STOCK	713448108	11590	182350	SH		SOLE	182350	0	0
D	PERFORMANCE FOOD GROUP CO	STOCK	713755106	620	20100	SH		SOLE	20100	0	0
D	PERRIGO CO	STOCK	714290103	3011	170494	SH		SOLE	170494	0	0
D	PERU COPPER INC	STOCK	715455101	616	150000	SH		SOLE	150000	0	0
D	PETROLEO BRASILEIRO SA PETRO	CALL	71654V901	7463	750	SH	CALL	SOLE	750	0	0
D	PETROLEO BRASILEIRO SA PETRO	STOCK	71654V408	1791	18000	SH		SOLE	18000	0	0
D	PFIZER INC	STOCK	717081103	402	15900	SH		SOLE	15900	0	0
D	PFSWEB INC	STOCK	717098107	103	100000	SH		SOLE	100000	0	0
D	PHASE FORWARD INC	STOCK	71721R406	1970	150000	SH		SOLE	150000	0	0
D	PHOTON DYNAMICS INC	CALL	719364901	3153	2500	SH	CALL	SOLE	2500	0	0
D	PHOTON DYNAMICS INC	STOCK	719364101	8562	678963	SH		SOLE	678963	0	0
D	PHOTRONICS INC	STOCK	719405102	700	44992	SH		SOLE	44992	0	0
D	PIER 1 IMPORTS INC	STOCK	720279108	5703	825300	SH		SOLE	825300	0	0
D	PILGRIMS PRIDE CORP	STOCK	721467108	1825	55000	SH		SOLE	55000	0	0
D	PIONEER NAT RES CO	STOCK	723787107	431	10000	SH		SOLE	10000	0	0
D	PIXELWORKS INC	STOCK	72581M107	565	342498	SH		SOLE	342498	0	0
D	PLAINS EXPL& PRODTN CO	STOCK	726505100	3390	75100	SH		SOLE	75100	0	0
D	PLAYBOY ENTERPRISES INC	STOCK	728117300	1027	99800	SH		SOLE	99800	0	0
D	PLAYTEX PRODS INC	STOCK	72813P100	407	30000	SH		SOLE	30000	0	0
D	PLEXUS CORP	STOCK	729132100	5574	325043	SH		SOLE	325043	0	0
D	PLEXUS CORP	CALL	729132900	1715	1000	SH	CALL	SOLE	1000	0	0
D	PLX TECHNOLOGY INC	STOCK	693417107	6702	688118	SH		SOLE	688118	0	0
D	PMC-SIERRA INC	STOCK	69344F106	19577	2792692	SH		SOLE	2792692	0	0
D	POLO RALPH LAUREN CORP	PUT	731572953	5289	600	SH	PUT	SOLE	600	0	0
D	POLYCOM INC	PUT	73172K954	6666	2000	SH	PUT	SOLE	2000	0	0
D	PORTFOLIO RECOVERY ASSOCS IN	PUT	73640Q955	2679	600	SH	PUT	SOLE	600	0	0
D	POWERSHARES ETF TRUST	STOCK	73935X500	9447	500093	SH		SOLE	500093	0	0
D	POWERWAVE TECHNOLOGIES INC	STOCK	739363109	10492	1843880	SH		SOLE	1843880	0	0
D	POZEN INC	STOCK	73941U102	1475	100000	SH		SOLE	100000	0	0
D	PPL CORP	STOCK	69351T106	8998	220000	SH		SOLE	220000	0	0
D	PRICE T ROWE GROUP INC	STOCK	74144T108	1449	30700	SH		SOLE	30700	0	0
D	PRIDE INTL INC DEL	CALL	74153Q902	903	300	SH	CALL	SOLE	300	0	0
D	PRIDE INTL INC DEL	STOCK	74153Q102	6493	215702	SH		SOLE	215702	0	0
D	PRIDE INTL INC DEL	PUT	74153Q952	2077	690	SH	PUT	SOLE	690	0	0
D	PRINCIPAL FINANCIAL GROUP IN	STOCK	74251V102	275	4600	SH		SOLE	4600	0	0
D	PROCTER & GAMBLE CO	STOCK	74273R109	3131	49579	SH		SOLE	49579	0	0
D	PROGRESSIVE GAMING INTL CORP	STOCK	74332S102	2288	508432	SH		SOLE	508432	0	0
D	PROSHARES TR	STOCK	74347R883	440	7550	SH		SOLE	7550	0	0
D	PUBLIC SVC ENTERPRISE GROUP	STOCK	744573106	10380	125000	SH		SOLE	125000	0	0
D	PULTE HOMES INC	STOCK	745867101	6086	230000	SH		SOLE	230000	0	0
D	QIMONDA AG	STOCK	746904101	1037	72200	SH		SOLE	72200	0	0
D	QLOGIC CORP	STOCK	747277101	5798	341078	SH		SOLE	341078	0	0
D	QUALCOMM INC	PUT	747525953	36065	8454	SH	PUT	SOLE	8454	0	0
D	QUALCOMM INC	CALL	747525903	7146	1675	SH	CALL	SOLE	1675	0	0
D	QUALCOMM INC	STOCK	747525103	20394	478052	SH		SOLE	478052	0	0
D	QUANTA SVCS INC	STOCK	74762E102	3153	125000	SH		SOLE	125000	0	0
D	QUANTUM CORP	STOCK	747906204	236	87300	SH		SOLE	87300	0	0
D	QUEST SOFTWARE INC	STOCK	74834T103	14205	873077	SH		SOLE	873077	0	0
D	QUESTAR CORP	STOCK	748356102	5183	58100	SH		SOLE	58100	0	0
D	QUICKLOGIC CORP	STOCK	74837P108	135	48296	SH		SOLE	48296	0	0
D	QUICKSILVER RESOURCES INC	STOCK	74837R104	9549	240100	SH		SOLE	240100	0	0
D	QUICKSILVER INC	STOCK	74838C106	469	40400	SH		SOLE	40400	0	0
D	RACKABLE SYS INC	CALL	750077909	2546	1500	SH	CALL	SOLE	1500	0	0
D	RACKABLE SYS INC	PUT	750077959	7669	4519	SH	PUT	SOLE	4519	0	0
D	RACKABLE SYS INC	STOCK	750077109	274	16168	SH		SOLE	16168	0	0
D	RADIO ONE INC	STOCK	75040P405	8075	1250000	SH		SOLE	1250000	0	0
D	RADIO ONE INC	CALL	75040P908	323	500	SH	CALL	SOLE	500	0	0
D	RADISYS CORP	STOCK	750459109	411	25150	SH		SOLE	25150	0	0
D	RAIT FINANCIAL TRUST	STOCK	749227104	8383	300020	SH		SOLE	300020	0	0
D	RAMBUS INC DEL	STOCK	750917106	12694	597388	SH		SOLE	597388	0	0
D	RAMBUS INC DEL	PUT	750917956	3613	1700	SH	PUT	SOLE	1700	0	0
D	RAMBUS INC DEL	CALL	750917906	15387	7241	SH	CALL	SOLE	7241	0	0
D	RANGE RES CORP	STOCK	75281A109	2989	89500	SH		SOLE	89500	0	0
D	RAYONIER INC	STOCK	754907103	3646	84800	SH		SOLE	84800	0	0
D	REALNETWORKS INC	STOCK	75605L104	2669	340050	SH		SOLE	340050	0	0
D	RED HAT INC	CALL	756577902	2293	1000	SH	CALL	SOLE	1000	0	0
D	REDDY ICE HLDGS INC	STOCK	75734R105	453	15000	SH		SOLE	15000	0	0
D	REDIFF COM INDIA LTD	STOCK	757479100	467	28000	SH		SOLE	28000	0	0
D	REDWOOD TR INC	STOCK	758075402	2087	40000	SH		SOLE	40000	0	0
D	REGAL ENTMT GROUP	STOCK	758766109	1987	100000	SH		SOLE	100000	0	0
D	REGIONAL BK HOLDERS TR	PUT	75902E950	11833	750	SH	PUT	SOLE	750	0	0
D	RENT A CTR INC NEW	STOCK	76009N100	9239	330200	SH		SOLE	330200	0	0
D	RESEARCH IN MOTION LTD	PUT	760975952	12775	936	SH	PUT	SOLE	936	0	0
D	RETAIL HOLDERS TR	PUT	76127U951	10105	1000	SH	PUT	SOLE	1000	0	0
D	REUTERS GROUP PLC	STOCK	76132M102	2214	40078	SH		SOLE	40078	0	0
D	RF MICRODEVICES INC	PUT	749941950	3115	5000	SH	PUT	SOLE	5000	0	0
D	RF MICRODEVICES INC	STOCK	749941100	1869	300000	SH		SOLE	300000	0	0
D	RF MONOLITHICS INC	STOCK	74955F106	537	105479	SH		SOLE	105479	0	0
D	RIGEL PHARMACEUTICALS INC	CALL	766559903	1629	1500	SH	CALL	SOLE	1500	0	0
D	RIO TINTO PLC	PUT	767204950	10251	450	SH	PUT	SOLE	450	0	0
D	RITE AID CORP	STOCK	767754104	596	103300	SH		SOLE	103300	0	0
D	RIVERBED TECHNOLOGY INC	STOCK	768573107	31675	1145993	SH		SOLE	1145993	0	0
D	ROCKWELL COLLINS INC	PUT	774341951	2938	439	SH	PUT	SOLE	439	0	0
D	ROCKWELL COLLINS INC	STOCK	774341101	201	3000	SH		SOLE	3000	0	0
D	ROGERS COMMUNICATIONS INC	STOCK	775109200	8059	246000	SH		SOLE	246000	0	0

D	ROGERS COMMUNICATIONS INC	CALL	775109900	1966	600 SH	CALL	SOLE	600	0	0
D	ROTECH HEALTHCARE INC	STOCK	778669101	43	25000 SH		SOLE	25000	0	0
D	RYDER SYS INC	STOCK	783549108	34539	700017 SH		SOLE	700017	0	0
D	RYDER SYS INC	CALL	783549908	2260	458 SH	CALL	SOLE	458	0	0
D	RYDER SYS INC	PUT	783549958	2467	500 SH	PUT	SOLE	500	0	0
D	RYLAND GROUP INC	STOCK	783764103	1381	32737 SH		SOLE	32737	0	0
D	SAFEMAY INC	PUT	786514958	1832	500 SH	PUT	SOLE	500	0	0
D	SAIC INC	STOCK	78390X101	5196	300000 SH		SOLE	300000	0	0
D	SAIFUN SEMICONDUCTORS LTD	STOCK	M8233P102	2950	251100 SH		SOLE	251100	0	0
D	SALESFORCE COM INC	PUT	79466L952	8564	2000 SH	PUT	SOLE	2000	0	0
D	SALESFORCE COM INC	CALL	79466L902	1070	250 SH	CALL	SOLE	250	0	0
D	SALIX PHARMACEUTICALS INC	PUT	795435956	1260	1000 SH	PUT	SOLE	1000	0	0
D	SANDERSON FARMS INC	STOCK	800013104	371	10000 SH		SOLE	10000	0	0
D	SANDISK CORP	PUT	80004C951	2190	500 SH	PUT	SOLE	500	0	0
D	SANDISK CORP	CALL	80004C901	6079	1388 SH	CALL	SOLE	1388	0	0
D	SANDISK CORP	STOCK	80004C101	13841	316000 SH		SOLE	316000	0	0
D	SANOFI AVENTIS	PUT	80105N955	8645	1987 SH	PUT	SOLE	1987	0	0
D	SAP AKTIENGESSELLSCHAFT	PUT	803054954	45664	10227 SH	PUT	SOLE	10227	0	0
D	SAPIENT CORP	STOCK	803062108	5183	755577 SH		SOLE	755577	0	0
D	SATYAM COMPUTER SERVICES LTD	STOCK	804098101	5247	231150 SH		SOLE	231150	0	0
D	SBA COMMUNICATIONS CORP	STOCK	78388J106	3542	119871 SH		SOLE	119871	0	0
D	SCHLUMBERGER LTD	STOCK	806857108	493	7135 SH		SOLE	7135	0	0
D	SCHLUMBERGER LTD	PUT	806857958	3455	500 SH	PUT	SOLE	500	0	0
D	SCHWAB CHARLES CORP NEW	STOCK	808513105	14647	800808 SH		SOLE	800808	0	0
D	SCHWEITZER-MAUDUIT INTL INC	STOCK	808541106	249	10000 SH		SOLE	10000	0	0
D	SCIENTIFIC GAMES CORP	STOCK	80874P109	5009	152586 SH		SOLE	152586	0	0
D	SCOTTISH RE GROUP LIMITED	STOCK	G73537410	118	29440 SH		SOLE	29440	0	0
D	SEAGATE TECHNOLOGY	STOCK	G7945J104	29057	1247100 SH		SOLE	1247100	0	0
D	SEAGATE TECHNOLOGY	CALL	G7945J904	15611	6700 SH	CALL	SOLE	6700	0	0
D	SEATTLE GENETICS INC	STOCK	812578102	313	38270 SH		SOLE	38270	0	0
D	SECURE COMPUTING CORP	STOCK	813705100	1579	205100 SH		SOLE	205100	0	0
D	SELECT SECTOR SPDR TR	PUT	81369Y950	2665	1000 SH	PUT	SOLE	1000	0	0
D	SELECT SECTOR SPDR TR	PUT	81369Y950	25920	4300 SH	PUT	SOLE	4300	0	0
D	SELECT SECTOR SPDR TR	PUT	81369Y950	14252	4000 SH	PUT	SOLE	4000	0	0
D	SELECT SECTOR SPDR TR	PUT	81369Y950	8162	3500 SH	PUT	SOLE	3500	0	0
D	SELECT SECTOR SPDR TR	PUT	81369Y950	40380	12000 SH	PUT	SOLE	12000	0	0
D	SELECT SECTOR SPDR TR	PUT	81369Y950	7606	2000 SH	PUT	SOLE	2000	0	0
D	SELECTICA INC	STOCK	816288104	135	69600 SH		SOLE	69600	0	0
D	SEMICONDUCTOR HLDRS TR	CALL	816636903	21283	6374 SH	CALL	SOLE	6374	0	0
D	SEMPRA ENERGY	STOCK	816851109	6839	112100 SH		SOLE	112100	0	0
D	SEMTech CORP	STOCK	816850101	16718	1240238 SH		SOLE	1240238	0	0
D	SEPRACOR INC	STOCK	817315104	121508	2605795 SH		SOLE	2605795	0	0
D	SEPRACOR INC	CALL	817315904	80908	17351 SH	CALL	SOLE	17351	0	0
D	SEPRACOR INC	PUT	817315954	15155	3250 SH	PUT	SOLE	3250	0	0
D	SHANDA INTERACTIVE ENTMT LTD	STOCK	81941Q203	2685	100000 SH		SOLE	100000	0	0
D	SHANDA INTERACTIVE ENTMT LTD	CALL	81941Q903	2685	1000 SH	CALL	SOLE	1000	0	0
D	SHARPER IMAGE CORP	STOCK	820013100	1429	129326 SH		SOLE	129326	0	0
D	SHERWIN WILLIAMS CO	PUT	824348956	6604	1000 SH	PUT	SOLE	1000	0	0
D	SHIRE PLC	CALL	82481R906	11142	1800 SH	CALL	SOLE	1800	0	0
D	SHUFFLE MASTER INC	STOCK	825549108	1462	80089 SH		SOLE	80089	0	0
D	SI INTL INC	STOCK	78427V102	870	30300 SH		SOLE	30300	0	0
D	SIERRA PAC RES NEW	STOCK	826428104	10515	605016 SH		SOLE	605016	0	0
D	SIGMA DESIGNS INC	STOCK	826565103	3648	138919 SH		SOLE	138919	0	0
D	SILICON IMAGE INC	STOCK	82705T102	352	43149 SH		SOLE	43149	0	0
D	SILICON LABORATORIES INC	PUT	826919952	3890	1300 SH	PUT	SOLE	1300	0	0
D	SILICON MOTION TECHNOLOGY CO	STOCK	82706C108	405	18000 SH		SOLE	18000	0	0
D	SILICONWARE PRECISION INDS L	STOCK	82708A864	19207	1957907 SH		SOLE	1957907	0	0
D	SIRENZA MICRODEVICES INC	STOCK	82966T106	7381	856257 SH		SOLE	856257	0	0
D	SIRF TECHNOLOGY HLDGS INC	PUT	82967H951	5552	2000 SH	PUT	SOLE	2000	0	0
D	SIRVA INC	STOCK	82967Y104	1071	300015 SH		SOLE	300015	0	0
D	SIX FLAGS INC	STOCK	83001P109	6010	1000000 SH		SOLE	1000000	0	0
D	SKECHERS U S A INC	STOCK	830566105	4703	140095 SH		SOLE	140095	0	0
D	SL GREEN RLTY CORP	STOCK	78440X101	1550	11300 SH		SOLE	11300	0	0
D	SMITH INTL INC	PUT	832110950	11532	2400 SH	PUT	SOLE	2400	0	0
D	SMITH INTL INC	STOCK	832110100	961	20000 SH		SOLE	20000	0	0
D	SMITH MICRO SOFTWARE INC	CALL	832154908	2142	1150 SH	CALL	SOLE	1150	0	0
D	SMITH MICRO SOFTWARE INC	STOCK	832154108	188	10100 SH		SOLE	10100	0	0
D	SMITHFIELD FOODS INC	STOCK	832248108	749	25000 SH		SOLE	25000	0	0
D	SOHU COM INC	STOCK	83408W103	852	39750 SH		SOLE	39750	0	0
D	SOMAXON PHARMACEUTICALS INC	STOCK	834453102	2025	165981 SH		SOLE	165981	0	0
D	SONIC CORP	STOCK	835451105	1116	50090 SH		SOLE	50090	0	0
D	SONUS NETWORKS INC	STOCK	835916107	6552	811943 SH		SOLE	811943	0	0
D	SONY CORP	PUT	835699957	9088	1800 SH	PUT	SOLE	1800	0	0
D	SOUTHERN COPPER CORP	PUT	84265V955	2866	400 SH	PUT	SOLE	400	0	0
D	SOUTHERN UN CO NEW	STOCK	844030106	1523	50100 SH		SOLE	50100	0	0
D	SOUTHWESTERN ENERGY CO	STOCK	845467109	3262	79600 SH		SOLE	79600	0	0
D	SPANISH BROADCASTING SYS INC	STOCK	846425882	248	61950 SH		SOLE	61950	0	0
D	SPANSION INC	STOCK	84649R101	5780	474150 SH		SOLE	474150	0	0
D	SPDR TR	STOCK	78462F103	14200	100000 SH		SOLE	100000	0	0
D	SPDR TR	PUT	78462F953	635720	44769 SH	PUT	SOLE	44769	0	0
D	SPECTRUM BRANDS INC	STOCK	84762L105	2375	375150 SH		SOLE	375150	0	0
D	SPECTRUM PHARMACEUTICALS INC	STOCK	84763A108	2038	325000 SH		SOLE	325000	0	0
D	SPRINT NEXTEL CORP	STOCK	852061100	14317	755100 SH		SOLE	755100	0	0
D	SRA INTL INC	STOCK	78464R105	2923	120000 SH		SOLE	120000	0	0
D	ST JUDE MED INC	STOCK	790849103	3061	81400 SH		SOLE	81400	0	0
D	ST JUDE MED INC	CALL	790849903	7522	2000 SH	CALL	SOLE	2000	0	0
D	STAMPS COM INC	STOCK	852857200	1150	80000 SH		SOLE	80000	0	0
D	STANDARD MICROSYSTEMS CORP	STOCK	853626109	1527	50000 SH		SOLE	50000	0	0
D	STANDARD PAC CORP NEW	STOCK	85375C101	4710	225659 SH		SOLE	225659	0	0
D	STAPLES INC	STOCK	855030102	3269	126509 SH		SOLE	126509	0	0
D	STARBUCKS CORP	STOCK	855244109	391	12463 SH		SOLE	12463	0	0
D	STARBUCKS CORP	CALL	855244909	3763	1200 SH	CALL	SOLE	1200	0	0

D STARWOOD HOTELS&RESORTS WRLD	STOCK	85590A401	18158	280000	SH	SOLE	280000	0	0
D STEAK N SHAKE CO	STOCK	857873103	2348	140000	SH	SOLE	140000	0	0
D STEIN MART INC	STOCK	858375108	469	28738	SH	SOLE	28738	0	0
D STEINER LEISURE LTD	STOCK	F8744Y102	900	20000	SH	SOLE	20000	0	0
D STEMCELLS INC	STOCK	85857R105	580	230000	SH	SOLE	230000	0	0
D STILLWATER MNG CO	STOCK	86074Q102	2798	220500	SH	SOLE	220500	0	0
D STONEPATH GROUP INC	STOCK	861837102	16	80000	SH	SOLE	80000	0	0
D STREETTRACKS GOLD TR	STOCK	863307104	2393	36397	SH	SOLE	36397	0	0
D STREETTRACKS SER TR	STOCK	86330E778	13206	200000	SH	SOLE	200000	0	0
D STREETTRACKS SER TR	PUT	86330E955	3255	1000	SH PUT	SOLE	1000	0	0
D STRYKER CORP	PUT	863667951	3316	500	SH PUT	SOLE	500	0	0
D SULPHCO INC	STOCK	865378103	1571	459408	SH	SOLE	459408	0	0
D SUN HEALTHCARE GROUP INC	STOCK	866933401	1235	100000	SH	SOLE	100000	0	0
D SUN MICROSYSTEMS INC	STOCK	866810104	1298	215987	SH	SOLE	215987	0	0
D SUN MICROSYSTEMS INC	PUT	866810954	3893	6478	SH PUT	SOLE	6478	0	0
D SUNCOR ENERGY INC	STOCK	867229106	1985	26000	SH	SOLE	26000	0	0
D SUNRISE SENIOR LIVING INC	PUT	86769K956	3952	1000	SH PUT	SOLE	1000	0	0
D SUNTECH PWR HLDGS CO LTD	STOCK	86800C104	883	25500	SH	SOLE	25500	0	0
D SUPERIOR ESSEX INC	STOCK	86815V105	344	9920	SH	SOLE	9920	0	0
D SUPERTEX INC	STOCK	868532102	2481	74716	SH	SOLE	74716	0	0
D SWITCH & DATA FACILITIES COM	STOCK	871043105	3399	187597	SH	SOLE	187597	0	0
D SYBASE INC	STOCK	871130100	14234	563042	SH	SOLE	563042	0	0
D SYBASE INC	CALL	871130900	3792	1500	SH CALL	SOLE	1500	0	0
D SYCAMORE NETWORKS INC	STOCK	871206108	9308	2488711	SH	SOLE	2488711	0	0
D SYMANTEC CORP	CALL	871503908	18165	10500	SH CALL	SOLE	10500	0	0
D SYMANTEC CORP	STOCK	871503108	7846	453534	SH	SOLE	453534	0	0
D SYNAPTICS INC	STOCK	87157D109	41834	1635422	SH	SOLE	1635422	0	0
D SYNOPSIS INC	STOCK	871607107	1312	50000	SH	SOLE	50000	0	0
D SYNOVUS FINL CORP	STOCK	87161C105	317	9800	SH	SOLE	9800	0	0
D SYNTAX BRILLIAN CORP	STOCK	87163L103	27920	3323765	SH	SOLE	3323765	0	0
D TAIWAN SEMICONDUCTOR MFG LTD	PUT	874039950	26861	24987	SH PUT	SOLE	24987	0	0
D TAKE-TWO INTERACTIVE SOFTWARE	STOCK	874054109	15779	783467	SH	SOLE	783467	0	0
D TALBOTS INC	STOCK	874161102	4724	200000	SH	SOLE	200000	0	0
D TALISMAN ENERGY INC	STOCK	87425E103	9834	560000	SH	SOLE	560000	0	0
D TALISMAN ENERGY INC	CALL	87425E903	878	500	SH CALL	SOLE	500	0	0
D TARGET CORP	PUT	87612E956	7111	1200	SH PUT	SOLE	1200	0	0
D TASER INTL INC	CALL	87651B904	964	1200	SH CALL	SOLE	1200	0	0
D TASER INTL INC	STOCK	87651B104	2393	297950	SH	SOLE	297950	0	0
D TCF FINL CORP	STOCK	872275102	1582	60000	SH	SOLE	60000	0	0
D TD AMERITRADE HLDG CORP	STOCK	87236Y108	3849	258700	SH	SOLE	258700	0	0
D TECH DATA CORP	STOCK	878237106	17146	478814	SH	SOLE	478814	0	0
D TECH DATA CORP	CALL	878237906	2149	600	SH CALL	SOLE	600	0	0
D TECHNITROL INC	STOCK	878555101	524	20000	SH	SOLE	20000	0	0
D TECK COMINCO LTD	STOCK	878742204	4176	60000	SH	SOLE	60000	0	0
D TEKELEC	STOCK	879101103	149	10000	SH	SOLE	10000	0	0
D TELE NORTE LESTE PART S A	STOCK	879246106	1384	100000	SH	SOLE	100000	0	0
D TELECOMUNICACOES DE SAO PAUL	STOCK	87929A102	1409	55000	SH	SOLE	55000	0	0
D TELETECH HOLDINGS INC	STOCK	879939106	367	10000	SH	SOLE	10000	0	0
D TELLABS INC	STOCK	879664100	10585	1069150	SH	SOLE	1069150	0	0
D TELLABS INC	CALL	879664900	4208	4250	SH CALL	SOLE	4250	0	0
D TENARIS S A	STOCK	88031M109	10098	220000	SH	SOLE	220000	0	0
D TENET HEALTHCARE CORP	STOCK	88033G100	178	27700	SH	SOLE	27700	0	0
D TERADYNE INC	PUT	880770952	827	500	SH PUT	SOLE	500	0	0
D TESORO CORP	PUT	881609951	14864	1480	SH PUT	SOLE	1480	0	0
D TESSERA TECHNOLOGIES INC	STOCK	88164L100	35236	886655	SH	SOLE	886655	0	0
D TETRA TECH INC NEW	STOCK	88162G103	960	50346	SH	SOLE	50346	0	0
D TEXAS INSTRS INC	PUT	882508954	6020	2000	SH PUT	SOLE	2000	0	0
D TEXTRON INC	CALL	883203901	9429	1050	SH CALL	SOLE	1050	0	0
D TEXTRON INC	STOCK	883203101	14368	160000	SH	SOLE	160000	0	0
D THERMAGE INC	STOCK	88343R101	1156	127000	SH	SOLE	127000	0	0
D THERMA-WAVE INC	STOCK	88343A108	3740	2412949	SH	SOLE	2412949	0	0
D THERMO FISHER SCIENTIFIC INC	CALL	883556902	9350	2000	SH CALL	SOLE	2000	0	0
D THERMOGENESIS CORP	STOCK	883623209	465	127807	SH	SOLE	127807	0	0
D THINK PARTNERSHIP INC	STOCK	88409N101	290	120000	SH	SOLE	120000	0	0
D THOMSON	STOCK	885118109	554	28700	SH	SOLE	28700	0	0
D THORATEC CORP	PUT	885175957	2090	1000	SH PUT	SOLE	1000	0	0
D THORATEC CORP	STOCK	885175307	1045	50000	SH	SOLE	50000	0	0
D THORATEC CORP	CALL	885175907	2090	1000	SH CALL	SOLE	1000	0	0
D TIBCO SOFTWARE INC	STOCK	88632Q103	1172	137560	SH	SOLE	137560	0	0
D TIBCO SOFTWARE INC	CALL	88632Q903	6424	7540	SH CALL	SOLE	7540	0	0
D TIFFANY & CO NEW	CALL	886547908	1364	300	SH CALL	SOLE	300	0	0
D TIM PARTICIPACOES S A	EQUITY	88706P106	3120	96050	SH	SOLE	96050	0	0
D TIME WARNER INC	STOCK	887317105	15506	786330	SH	SOLE	786330	0	0
D TITAN PHARMACEUTICALS INC DE	STOCK	888314101	5726	2299646	SH	SOLE	2299646	0	0
D TJX COS INC NEW	STOCK	872540109	6740	250000	SH	SOLE	250000	0	0
D TOLL BROTHERS INC	STOCK	889478103	5476	200000	SH	SOLE	200000	0	0
D TOP TANKERS INC	STOCK	Y8897Y107	1258	270000	SH	SOLE	270000	0	0
D TOTAL S A	CALL	89151E909	3489	500	SH CALL	SOLE	500	0	0
D TOTAL S A	STOCK	89151E109	12560	180000	SH	SOLE	180000	0	0
D TRANSALTA CORP	EQUITY	89346D107	1280	59100	SH	SOLE	59100	0	0
D TRANSWITCH CORP	STOCK	894065101	796	500941	SH	SOLE	500941	0	0
D TRIAD HOSPITALS INC	STOCK	89579K109	436	8340	SH	SOLE	8340	0	0
D TRIBUNE CO NEW	STOCK	896047107	6123	190700	SH	SOLE	190700	0	0
D TRIDENT MICROSYSTEMS INC	PUT	895919958	4012	2000	SH PUT	SOLE	2000	0	0
D TRIDENT MICROSYSTEMS INC	CALL	895919908	4853	2419	SH CALL	SOLE	2419	0	0
D TRIDENT MICROSYSTEMS INC	STOCK	895919108	57074	2845145	SH	SOLE	2845145	0	0
D TRIMBLE NAVIGATION LTD	STOCK	896239100	7978	297234	SH	SOLE	297234	0	0
D TRUBION PHARMACEUTICALS INC	STOCK	89778N102	2079	105565	SH	SOLE	105565	0	0
D TRUE RELIGION APPAREL INC	STOCK	89784N104	2772	170690	SH	SOLE	170690	0	0
D TTM TECHNOLOGIES INC	STOCK	87305R109	2997	314102	SH	SOLE	314102	0	0
D TUMBLEWEED COMMUNICATIONS CO	STOCK	899690101	1535	500000	SH	SOLE	500000	0	0
D TURBOCHEF TECHNOLOGIES INC	STOCK	900006206	4663	306354	SH	SOLE	306354	0	0

D	TURKCELL ILETISIM HIZMETLERI	STOCK	900111204	596	45000 SH	SOLE	45000	0	0
D	TXU CORP	STOCK	873168108	5128	80000 SH	SOLE	80000	0	0
D	TYCO INTL LTD NEW	STOCK	902124106	2821	89419 SH	SOLE	89419	0	0
D	TYCO INTL LTD NEW	CALL	902124906	6310	2000 SH CALL	SOLE	2000	0	0
D	TYSON FOODS INC	STOCK	902494103	194	10000 SH	SOLE	10000	0	0
D	U S AIRWAYS GROUP INC	STOCK	90341W108	1505	33100 SH	SOLE	33100	0	0
D	U S CONCRETE INC	STOCK	90333L102	4286	548056 SH	SOLE	548056	0	0
D	U S ENERGY CORP WYO	STOCK	911805109	3405	640000 SH	SOLE	640000	0	0
D	U S G CORP	STOCK	903293405	43422	930207 SH	SOLE	930207	0	0
D	U S G CORP	CALL	903293905	9336	2000 SH CALL	SOLE	2000	0	0
D	U S XPRESS ENTERPRISES INC	STOCK	90338N103	7899	457674 SH	SOLE	457674	0	0
D	U S XPRESS ENTERPRISES INC	CALL	90338N903	863	500 SH CALL	SOLE	500	0	0
D	UAL CORP	STOCK	902549807	6282	164571 SH	SOLE	164571	0	0
D	UBS AG	CALL	H89231908	4754	800 SH CALL	SOLE	800	0	0
D	UBS AG	STOCK	H89231338	7141	120166 SH	SOLE	120166	0	0
D	ULTRA PETROLEUM CORP	STOCK	903914109	2837	53400 SH	SOLE	53400	0	0
D	ULTRA PETROLEUM CORP	PUT	903914959	1594	300 SH PUT	SOLE	300	0	0
D	ULTRAPETROL BAHAMAS LTD	STOCK	P94398107	3348	199522 SH	SOLE	199522	0	0
D	UNION PAC CORP	PUT	907818958	3047	300 SH PUT	SOLE	300	0	0
D	UNION PAC CORP	STOCK	907818108	11171	110000 SH	SOLE	110000	0	0
D	UNISOURCE ENERGY CORP	STOCK	909205106	1044	27800 SH	SOLE	27800	0	0
D	UNITED AUTO GROUP INC	STOCK	909440109	1027	50600 SH	SOLE	50600	0	0
D	UNITED INDL CORP	STOCK	910671106	3312	60000 SH	SOLE	60000	0	0
D	UNITED MICROELECTRONICS CORP	STOCK	910873207	2817	886003 SH	SOLE	886003	0	0
D	UNITED PANAM FINANCIAL CP	STOCK	911301109	320	25600 SH	SOLE	25600	0	0
D	UNITED RENTALS INC	STOCK	911363109	1386	50400 SH	SOLE	50400	0	0
D	UNITED STATES STL CORP NEW	STOCK	912909108	833	8400 SH	SOLE	8400	0	0
D	UNITED TECHNOLOGIES CORP	CALL	913017909	2600	400 SH CALL	SOLE	400	0	0
D	UNITED TECHNOLOGIES CORP	STOCK	913017109	3133	48200 SH	SOLE	48200	0	0
D	UNITEDHEALTH GROUP INC	CALL	91324P902	18540	3500 SH CALL	SOLE	3500	0	0
D	UNITEDHEALTH GROUP INC	PUT	91324P952	1589	300 SH PUT	SOLE	300	0	0
D	URBAN OUTFITTERS INC	STOCK	917047102	2518	95000 SH	SOLE	95000	0	0
D	US BIOENERGY CORP	STOCK	90342V109	1255	109400 SH	SOLE	109400	0	0
D	USANA HEALTH SCIENCES INC	STOCK	90328M107	234	5000 SH	SOLE	5000	0	0
D	USANA HEALTH SCIENCES INC	PUT	90328M957	937	200 SH PUT	SOLE	200	0	0
D	UTI WORLDWIDE INC	STOCK	G87210103	6391	260000 SH	SOLE	260000	0	0
D	VALERO ENERGY CORP NEW	CALL	91913Y900	9674	1500 SH CALL	SOLE	1500	0	0
D	VANDA PHARMACEUTICALS INC	STOCK	921659108	8701	357168 SH	SOLE	357168	0	0
D	VARIAN SEMICONDUCTOR EQUIPMN	CALL	922207905	5338	1000 SH CALL	SOLE	1000	0	0
D	VARIAN SEMICONDUCTOR EQUIPMN	PUT	922207955	52798	9891 SH PUT	SOLE	9891	0	0
D	VASCO DATA SEC INTL INC	STOCK	92230Y104	180	10100 SH	SOLE	10100	0	0
D	VENDINGDATA CORPORATION	STOCK	92261Q202	454	171300 SH	SOLE	171300	0	0
D	VERTEX PHARMACEUTICALS INC	PUT	92532F950	2748	980 SH PUT	SOLE	980	0	0
D	VERTICALNET INC	STOCK	92532L305	89	198356 SH	SOLE	198356	0	0
D	VION PHARMACEUTICALS INC	STOCK	927624106	2771	1649539 SH	SOLE	1649539	0	0
D	VIRAGE LOGIC CORP	STOCK	92763R104	167	23000 SH	SOLE	23000	0	0
D	VIRGIN MEDIA INC	STOCK	92769L101	6773	268230 SH	SOLE	268230	0	0
D	VISHAY INTERTECHNOLOGY INC	STOCK	928298108	1915	136970 SH	SOLE	136970	0	0
D	VISICU INC	STOCK	92831L204	1131	145000 SH	SOLE	145000	0	0
D	VIVO PARTICIPACOES S A	EQUITY	92855S101	3578	1019400 SH	SOLE	1019400	0	0
D	VIVUS INC	STOCK	928551100	437	85100 SH	SOLE	85100	0	0
D	VODAFONE GROUP PLC NEW	STOCK	92857W209	405	15060 SH	SOLE	15060	0	0
D	VOLTERRA SEMICONDUCTOR CORP	STOCK	928708106	1078	82525 SH	SOLE	82525	0	0
D	VYVO INC	STOCK	918458209	2545	310000 SH	SOLE	310000	0	0
D	WABASH NAIL CORP	STOCK	929566107	3209	208100 SH	SOLE	208100	0	0
D	WABTEC CORP	STOCK	929740108	2759	80000 SH	SOLE	80000	0	0
D	WAL MART STORES INC	STOCK	931142103	3653	77816 SH	SOLE	77816	0	0
D	WALGREEN CO	STOCK	931422109	477	10400 SH	SOLE	10400	0	0
D	WALGREEN CO	PUT	931422959	4130	900 SH PUT	SOLE	900	0	0
D	WALTER INDS INC	STOCK	93317Q105	12147	490800 SH	SOLE	490800	0	0
D	WALTER INDS INC	CALL	93317Q905	3713	1500 SH CALL	SOLE	1500	0	0
D	WASHINGTON MUT INC	PUT	939322953	1837	455 SH PUT	SOLE	455	0	0
D	WASTE MGMT INC DEL	CALL	94106L909	5506	1600 SH CALL	SOLE	1600	0	0
D	WASTE MGMT INC DEL	STOCK	94106L109	8998	261498 SH	SOLE	261498	0	0
D	WATSCO INC	STOCK	942622200	2809	55000 SH	SOLE	55000	0	0
D	WATSON PHARMACEUTICALS INC	CALL	942683903	3965	1500 SH CALL	SOLE	1500	0	0
D	WATSON PHARMACEUTICALS INC	STOCK	942683103	8722	330000 SH	SOLE	330000	0	0
D	WEATHERFORD INTERNATIONAL LT	PUT	G95089951	3608	800 SH PUT	SOLE	800	0	0
D	WEBEX COMMUNICATIONS INC	PUT	94767L959	2843	500 SH PUT	SOLE	500	0	0
D	WEBMETHODS INC	STOCK	94768C108	5995	833846 SH	SOLE	833846	0	0
D	WEBSense INC	PUT	947684956	6021	2619 SH PUT	SOLE	2619	0	0
D	WEBSIDESTORY INC	STOCK	94768S103	777	60000 SH	SOLE	60000	0	0
D	WEBZEN INC	STOCK	94846M102	1042	250000 SH	SOLE	250000	0	0
D	WELLCARE HEALTH PLANS INC	PUT	94946T956	5115	600 SH PUT	SOLE	600	0	0
D	WELLMAN INC	STOCK	949702104	108	30000 SH	SOLE	30000	0	0
D	WESTERN UN CO	CALL	959802909	3951	1800 SH CALL	SOLE	1800	0	0
D	WESTERN UN CO	STOCK	959802109	4928	224507 SH	SOLE	224507	0	0
D	WET SEAL INC	STOCK	961840105	671	102454 SH	SOLE	102454	0	0
D	WEYERHAEUSER CO	PUT	962166954	2990	400 SH PUT	SOLE	400	0	0
D	WHEELING PITTSBURGH CORP	STOCK	963142302	476	20100 SH	SOLE	20100	0	0
D	WHIRLPOOL CORP	STOCK	963320106	917	10804 SH	SOLE	10804	0	0
D	WHITE ELECTR DESIGNS CORP	STOCK	963801105	1285	193009 SH	SOLE	193009	0	0
D	WHOLE FOODS MKT INC	STOCK	966837106	1585	35336 SH	SOLE	35336	0	0
D	WILLIAMS COS INC DEL	STOCK	969457100	7855	276000 SH	SOLE	276000	0	0
D	WIND RIVER SYSTEMS INC	STOCK	973149107	8304	835410 SH	SOLE	835410	0	0
D	WIRELESS FACILITIES INC	STOCK	97653A103	111	85000 SH	SOLE	85000	0	0
D	WISCONSIN ENERGY CORP	STOCK	976657106	13843	285300 SH	SOLE	285300	0	0
D	WNS HOLDINGS LTD	STOCK	92932M101	443	15200 SH	SOLE	15200	0	0
D	WORTHINGTON INDS INC	STOCK	981811102	6449	313378 SH	SOLE	313378	0	0
D	WPT ENTERPRISES INC	STOCK	98211W108	3141	611178 SH	SOLE	611178	0	0
D	WRIGLEY WM JR CO	STOCK	982526105	255	5000 SH	SOLE	5000	0	0
D	XENOPORT INC	STOCK	98411C100	6408	230000 SH	SOLE	230000	0	0

D	XEROX CORP	STOCK	984121103	2388	141372 SH	SOLE	141372	0	0
D	XM SATELLITE RADIO HLDGS INC	CALL	983759901	5814	4500 SH CALL	SOLE	4500	0	0
D	XM SATELLITE RADIO HLDGS INC	STOCK	983759101	11989	927927 SH	SOLE	927927	0	0
D	XTO ENERGY INC	STOCK	98385X106	11000	200693 SH	SOLE	200693	0	0
D	YAHOO INC	PUT	984332956	8198	2620 SH PUT	SOLE	2620	0	0
D	YAHOO INC	STOCK	984332106	29280	935762 SH	SOLE	935762	0	0
D	YAHOO INC	CALL	984332906	39191	12525 SH CALL	SOLE	12525	0	0
D	YRC WORLDWIDE INC	PUT	984249952	4022	1000 SH PUT	SOLE	1000	0	0
D	ZALE CORP NEW	STOCK	988858106	5276	200000 SH	SOLE	200000	0	0
D	ZHONG TECHNOLOGIES INC NEW	STOCK	98950P108	690	556400 SH	SOLE	556400	0	0
D	ZIMMER HLDGS INC	PUT	98956P952	4270	500 SH PUT	SOLE	500	0	0
D	ZOLTEK COS INC	PUT	98975W954	1747	500 SH PUT	SOLE	500	0	0
D	ZOLTEK COS INC	STOCK	98975W104	4366	125000 SH	SOLE	125000	0	0

S REPORT SUMMARY 1322 DATA RECORDS 9186473 OTHER MANAGERS ON WHOSE BEHALF REPORT IS FILED
 </TABLE>
 </TEXT>
 </DOCUMENT>

DX-1169

<DOCUMENT>
 <TYPE>13F-HR
 <SEQUENCE>1
 <FILENAME>d72550_13f-hr.txt
 <DESCRIPTION>QUARTERLY INITIAL HOLDING REPORT
 <TEXT>

UNITED STATES
 SECURITIES AND EXCHANGE COMMISSION
 WASHINGTON, D.C. 20549

FORM 13F

FORM 13F COVER PAGE

Report for the Calendar Year or Quarter Ended: June 30, 2007

Check here if Amendment / /; Amendment Number: _____

This Amendment (Check only one.): / / is a restatement.
 / / adds new holdings entries.

Institutional Investment Manager Filing this Report:

Name: Galleon Management, L.P.
 Address: 590 Madison Avenue, 34th Floor
 New York, NY 10022

Form 13F File Number: 28- _____

The institutional investment manager filing this report and the person by whom it is signed hereby represent that the person signing the report is authorized to submit it, that all information contained herein is true, correct and complete, and that it is understood that all required items, statements, schedules, lists, and tables, are considered integral parts of this form.

Person Signing this Report on Behalf of Reporting Manager:

Name: Mr. George Lau
 Title: Chief Financial Officer
 Phone: (212) 829-4034

Signature, Place, and Date of Signing:

/s/ George Lau New York, NY 8/14/07
 [Signature] [City, State] [Date]

Report Type (Check only one.):

/X/ 13F HOLDINGS REPORT. (Check here if all holdings of this reporting manager are reported in this report.)
 / / 13F NOTICE. (Check here if no holdings reported are in this report, and all holdings are reported by other reporting manager(s).)
 / / 13F COMBINATION REPORT. (Check here if a portion of the holdings for this reporting manager are reported in this report and a portion are reported by other reporting manager(s).)

List of Other Managers Reporting for this Manager:
 [If there are no entries in this list, omit this section.]

Form 13F File Number	Name
28- _____	Mr. Raj Rajaratham

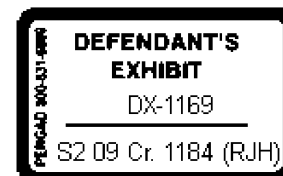
[Repeat as necessary.]

<Page>

FORM 13F SUMMARY PAGE

Report Summary:

Number of Other Included Managers: 1
 Form 13F Information Table Entry Total: 1,384
 Form 13F Information Table Value Total: 11,058,167
 (thousands)



List of Other Included Managers:

Provide a numbered list of the name(s) and Form 13F file number(s) of all institutional investment managers with respect to which this report is filed, other than the manager filing this report.

[If there are no entries in this list, state "NONE" and omit the column headings and list entries.]

No.	Form 13F File Number	Name
1	28-	Mr. Raj Rajaratnam

[Repeat as necessary.]

<PAGE>

FORM 13F INFORMATION TABLE

<TABLE>

<CAPTION>

NAME OF ISSUER	TITLE OF CLASS	CUSIP	VALUE (x\$1000)	SHARES/ PRN AMT	SH/ PRN	PUT/ CALL	INVTMT DSCRETN	OTHER MANAGERS	VOTING AUTHORITY SOLE SHARED NONE
<S>	<C>	<C>	<C>	<C>	<C>	<C>	<C>	<C>	<C>
3COM CORP	COM	885535104	2,066,404	500340	Sh		Shared - Other	1	500340
3M CO	COM	88579Y951	5,207,400	60000		PUT	Shared - Other	1	60000
99 CENTS ONLY STORES	COM	65440K106	8,563,452	653200	Sh		Shared - Other	1	653200
ABITIBI-CONSOLIDATED INC	COM	003924107	4,973,301	1691599	Sh		Shared - Other	1	1691599
ACCURAY INC	COM	004397105	221,800	10000	Sh		Shared - Other	1	10000
ACE LTD	COM	G0070K103	1,318,734	21093	Sh		Shared - Other	1	21093
ACME PACKET INC	COM	004764106	1,645,012	143169	Sh		Shared - Other	1	143169
ACTIONS SEMICONDUCTOR CO LTD	COM	00507E107	9,341,955	1519017	Sh		Shared - Other	1	1519017
ACTIVISION INC NEW	COM	004930202	22,756,378	1218874	Sh		Shared - Other	1	1218874
ACTUATE CORP	COM	00508B102	339,500	50000	Sh		Shared - Other	1	50000
ADAPTEC INC	COM	00651F108	1,096,160	287706	Sh		Shared - Other	1	287706
ADOBE SYS INC	COM	00724F101	74,785,478	1862652	Sh		Shared - Other	1	1862652
ADOBE SYS INC	COM	00724F901	7,026,250	175000		CALL	Shared - Other	1	175000
ADTRAN INC	COM	00738A106	14,937,944	575200	Sh		Shared - Other	1	575200
ADVANCE AUTO PARTS INC	COM	00751Y106	2,026,500	50000	Sh		Shared - Other	1	50000
ADVANCED MAGNETICS INC	COM	00753P903	12,155,440	209000		CALL	Shared - Other	1	209000
ADVANCED MICRO DEVICES INC	COM	007903907	15,123,680	1057600		CALL	Shared - Other	1	1057600
ADVANCED MICRO DEVICES INC	COM	007903107	153,105,009	10706644	Sh		Shared - Other	1	10706644
AECOM TECHNOLOGY CORP DELAWA	COM	00766T100	496,200	20000	Sh		Shared - Other	1	20000
AEGON N V	COM	007924103	1,546,435	78699	Sh		Shared - Other	1	78699
AERCAP HOLDINGS NV	COM	N00985106	11,603,200	362600	Sh		Shared - Other	1	362600
AEROSTALE	COM	007865108	279,673	6710	Sh		Shared - Other	1	6710
AEROSTALE	COM	007865958	4,168,000	100000		PUT	Shared - Other	1	100000
AES CORP	COM	00130H105	5,470,000	250000	Sh		Shared - Other	1	250000
AES CORP	COM	00130H905	1,531,600	70000		CALL	Shared - Other	1	70000
AETNA INC NEW	COM	00817Y908	4,940,000	100000		CALL	Shared - Other	1	100000
AETNA INC NEW	COM	00817Y958	2,470,000	50000		PUT	Shared - Other	1	50000
AFFILIATED COMPUTER SERVICES	COM	008190100	6,055,427	106760	Sh		Shared - Other	1	106760
AFFILIATED COMPUTER SERVICES	COM	008190950	10,209,600	180000		PUT	Shared - Other	1	180000
AFFILIATED MANAGERS GROUP	COM	008252108	3,219,000	25000	Sh		Shared - Other	1	25000
AFFYMETRIX INC	COM	00826T908	4,731,589	190100		CALL	Shared - Other	1	190100
AIRCASTLE LTD	COM	G0129K104	10,000	10000	Sh		Shared - Other	1	10000
AKAMAI TECHNOLOGIES INC	COM	00971T951	12,160,000	250000		PUT	Shared - Other	1	250000
AKAMAI TECHNOLOGIES INC	COM	00971T101	10,163,523	208954	Sh		Shared - Other	1	208954
AKAMAI TECHNOLOGIES INC	COM	00971T901	20,428,800	420000		CALL	Shared - Other	1	420000
AKORN INC	COM	009728106	7,514,250	1075000	Sh		Shared - Other	1	1075000
ALCAN INC	COM	013716105	813,000	10000	Sh		Shared - Other	1	10000
ALCATEL-LUCENT	COM	013904305	5,047,000	360500	Sh		Shared - Other	1	360500
ALCOA INC	COM	013817101	60,369,435	1489500	Sh		Shared - Other	1	1489500
ALCOA INC	COM	013817901	21,541,695	531500		CALL	Shared - Other	1	531500
ALLERGAN INC	COM	018490102	297,999	5170	Sh		Shared - Other	1	5170
ALLIANT TECHSYSTEMS INC	COM	018804104	1,983,000	20000	Sh		Shared - Other	1	20000
ALLIED WASTE INDS INC	COM	019589308	14,806,000	1100000	Sh		Shared - Other	1	1100000
ALLSTATE CORP	COM	020002101	1,405,504	22850	Sh		Shared - Other	1	22850
ALLTEL CORP	COM	020039103	1,013,250	15000	Sh		Shared - Other	1	15000
ALPHA NATURAL RESOURCES INC	COM	02076X902	6,860,700	330000		CALL	Shared - Other	1	330000
ALPHARMA INC	COM	020813901	4,179,807	160700		CALL	Shared - Other	1	160700
ALPHARMA INC	COM	020813101	11,665,485	448500	Sh		Shared - Other	1	448500
ALTERA CORP	COM	021441950	11,065,000	500000		PUT	Shared - Other	1	500000
ALTRA HOLDINGS INC	COM	02208R106	4,736,448	274100	Sh		Shared - Other	1	274100
ALTUS PHARMACEUTICALS INC	COM	02216N105	1,327,100	115000	Sh		Shared - Other	1	115000
AMAZON COM INC	COM	023135106	513,075	7500	Sh		Shared - Other	1	7500
AMAZON COM INC	COM	023135956	19,154,800	280000		PUT	Shared - Other	1	280000
AMDOCS LTD	COM	G02602103	4,646,994	116700	Sh		Shared - Other	1	116700
AMERICA MOVIL SAB DE CV	COM	02364W905	9,289,500	150000		CALL	Shared - Other	1	150000
AMERICA MOVIL SAB DE CV	COM	02364W105	12,423,158	200600	Sh		Shared - Other	1	200600
AMERICAN EAGLE OUTFITTERS NE	COM	02553E106	2,566,000	100000	Sh		Shared - Other	1	100000

AMERICAN ELEC PWR INC	COM	025537101	7,243,423	160822	Sh		Shared - Other	1	160822
AMERICAN EXPRESS CO	COM	025816109	5,133,614	83910	Sh		Shared - Other	1	83910
AMERICAN INTL GROUP INC	COM	026874907	80,534,500	1150000		CALL	Shared - Other	1	1150000
AMERICAN INTL GROUP INC	COM	026874957	22,059,450	315000		PUT	Shared - Other	1	315000
AMERICAN INTL GROUP INC	COM	026874107	99,993,246	1427863	Sh		Shared - Other	1	1427863
AMERICAN MED SYS HLDGS INC	COM	02744M108	180,400	10000	Sh		Shared - Other	1	10000
AMERICAN OIL & GAS INC NEW	COM	028723104	1,648,218	243100	Sh		Shared - Other	1	243100
AMERICAN ORIENTAL BIOENGR IN	COM	028731907	1,335,000	150000		CALL	Shared - Other	1	150000
AMERICAN STD COS INC DEL	COM	029712906	5,898,000	100000		CALL	Shared - Other	1	100000
AMERICAN STD COS INC DEL	COM	029712106	9,960,306	168876	Sh		Shared - Other	1	168876
AMERICAN TOWER CORP	COM	029912201	5,043,234	120077	Sh		Shared - Other	1	120077
AMERIPRISE FINL INC	COM	03076C106	10,806,900	170000	Sh		Shared - Other	1	170000
AMERISOURCEBERGEN CORP	COM	03073E955	2,473,500	50000		PUT	Shared - Other	1	50000
AMERISTAR CASINOS INC	COM	03070Q101	4,516,200	130000	Sh		Shared - Other	1	130000
AMETEK INC NEW	COM	031100100	1,587,200	40000	Sh		Shared - Other	1	40000
AMGEN INC	COM	031162900	2,764,500	50000		CALL	Shared - Other	1	50000
AMGEN INC	COM	031162950	552,900	10000		PUT	Shared - Other	1	10000
AMIS HLDGS INC	COM	031538101	352,663	29168	Sh		Shared - Other	1	29168
AMR CORP	COM	001765906	3,952,500	150000		CALL	Shared - Other	1	150000
AMR CORP	COM	001765106	7,246,250	275000	Sh		Shared - Other	1	275000
AMTECH SYS INC	COM	032332504	175,000	20000	Sh	PAR \$0.01N			
ANADARKO PETE CORP	COM	032511957	2,079,600	40000		PUT	Shared - Other	1	20000
ANADIGICS INC	COM	032515108	965,300	70000	Sh		Shared - Other	1	40000
ANADIGICS INC	COM	032515958	1,379,000	100000		PUT	Shared - Other	1	70000
ANALOG DEVICES INC	COM	032654105	29,527,677	784476	Sh		Shared - Other	1	100000
ANDERSONS INC	COM	034164103	1,359,900	30000	Sh		Shared - Other	1	784476
ANGIODYNAMICS INC	COM	03475V101	2,521,400	140000	Sh		Shared - Other	1	30000
ANGLOGOLD ASHANTI LTD	COM	035128206	6,202,480	164000	Sh		Shared - Other	1	140000
ANHEUSER BUSCH COS INC	COM	035229103	13,040,000	250000	Sh		Shared - Other	1	164000
ANNALY CAP MGMT INC	COM	035710409	70,000	70000	Sh		Shared - Other	1	250000
ANSWERTHINK INC	COM	036916104	5,990,430	1654815	Sh		Shared - Other	1	70000
ANSYS INC	COM	03662Q105	3,731,200	140800	Sh		Shared - Other	1	1654815
ANTARES PHARMA INC	COM	036642106	1,580,000	1000000	Sh		Shared - Other	1	140800
APACHE CORP	COM	037411955	4,079,500	50000		PUT	Shared - Other	1	1000000
APPLE INC	COM	037833950	7,932,600	65000		PUT	Shared - Other	1	50000
APPLE INC	COM	037833100	101,903,400	835000	Sh		Shared - Other	1	65000
APPLEBEES INTL INC	COM	037899101	323,181	13410	Sh		Shared - Other	1	835000
APPLERA CORP	COM	038020103	15,880,800	520000	Sh		Shared - Other	1	13410
APPLERA CORP	COM	038020903	16,341,954	535100		CALL	Shared - Other	1	520000
APPLIED MATLS INC	COM	038222955	58,622,461	2950300		PUT	Shared - Other	1	535100
APPLIED MICRO CIRCUITS CORP	COM	03822W109	3,758,240	1503296	Sh		Shared - Other	1	2950300
APPLIX INC	COM	038316105	1,151,500	70000	Sh		Shared - Other	1	1503296
AQUILA INC	COM	03840P102	5,643,791	1379900	Sh		Shared - Other	1	70000
ARCELOR MITTAL	COM	03937E101	624,000	10000	Sh		Shared - Other	1	1379900
ARCH CAP GROUP LTD	COM	G0450A105	7,293,607	100546	Sh		Shared - Other	1	10000
ARCH COAL INC	COM	039380900	6,264,000	180000		CALL	Shared - Other	1	100546
ARCH COAL INC	COM	039380100	9,570,000	275000	Sh		Shared - Other	1	180000
ARCHER DANIELS MIDLAND CO	COM	039483102	9,099,750	275000	Sh		Shared - Other	1	275000
ARCHER DANIELS MIDLAND CO	COM	039483902	8,272,500	250000		CALL	Shared - Other	1	275000
ARIBA INC	COM	04033V903	792,800	80000		CALL	Shared - Other	1	250000
ARMSTRONG WORLD INDS INC NEW	COM	04247X102	250,750	5000	Sh		Shared - Other	1	80000
AROTEC CORP	COM	042682203	169,000	50000	Sh		Shared - Other	1	5000
ARQULE INC	COM	04269E107	1,058,205	150100	Sh		Shared - Other	1	50000
ARROW ELECTRS INC	COM	042735950	3,843,000	100000		PUT	Shared - Other	1	150100
ART TECHNOLOGY GROUP INC	COM	04289L107	319,681	120181	Sh		Shared - Other	1	100000
ARUBA NETWORKS INC	COM	043176106	16,080,000	800000	Sh		Shared - Other	1	120181
ASE TEST LTD	COM	Y02516105	2,110,500	150000	Sh		Shared - Other	1	800000
ASHLAND INC NEW	COM	044209954	3,197,500	50000		PUT	Shared - Other	1	150000
ASML HLDG NV	COM	N07059951	42,547,500	1550000		PUT	Shared - Other	1	50000
ASSURANT INC	COM	04621X108	1,000,108	16974	Sh		Shared - Other	1	1550000
ATHEROS COMMUNICATIONS INC	COM	04743P108	925,200	30000	Sh		Shared - Other	1	16974
ATHEROS COMMUNICATIONS INC	COM	04743P958	3,084,000	100000		PUT	Shared - Other	1	30000
ATMEL CORP	COM	049513104	20,581,085	3701634	Sh		Shared - Other	1	100000
ATMI INC	COM	00207R101	750,000	25000	Sh		Shared - Other	1	3701634
AU OPTRONICS CORP	COM	002255107	1,764,720	102600	Sh		Shared - Other	1	25000
AUDICODES LTD	COM	M15342104	847,215	150750	Sh		Shared - Other	1	102600
AUTODESK INC	COM	052769956	18,832,000	400000		PUT	Shared - Other	1	150750
AUTOMATIC DATA PROCESSING IN	COM	053015103	6,785,800	140000	Sh		Shared - Other	1	400000
AUTOMATIC DATA PROCESSING IN	COM	053015903	2,908,200	60000		CALL	Shared - Other	1	140000
AUTOZONE INC	COM	053332952	60,795,900	445000		PUT	Shared - Other	1	60000
AUXILIUM PHARMACEUTICALS INC	COM	05334D107	2,391,000	150000	Sh		Shared - Other	1	445000
AVANEX CORP	COM	05348W109	1,800,175	1000097	Sh		Shared - Other	1	150000
AVAYA INC	COM	053499909	2,947,000	175000		CALL	Shared - Other	1	1000097
AVAYA INC	COM	053499109	75,065,782	4457588	Sh		Shared - Other	1	175000
AVENTINE RENEWABLE ENERGY	COM	05356X403	509,100	30000	Sh		Shared - Other	1	4457588
AVERY DENNISON CORP	COM	053611909	8,974,800	135000		CALL	Shared - Other	1	30000
AVERY DENNISON CORP	COM	053611109	5,983,200	90000	Sh		Shared - Other	1	135000

AVID TECHNOLOGY INC	COM	05367P100	530,250	15000	Sh		Shared - Other	1	15000
AVNET INC	COM	053807953	33,273,816	839400	Sh	PUT	Shared - Other	1	839400
AVOCENT CORP	COM	053893103	1,450,500	50000	Sh		Shared - Other	1	50000
AVON PRODS INC	COM	054303102	735,000	20000	Sh		Shared - Other	1	20000
AXCELIS TECHNOLOGIES INC	COM	054540109	649,422	100065	Sh		Shared - Other	1	100065
BAKER HUGHES INC	COM	057224107	312,964	3720	Sh		Shared - Other	1	3720
BALLY TECHNOLOGIES INC	COM	05874B107	3,051,510	115500	Sh		Shared - Other	1	115500
BANK OF AMERICA CORPORATION	COM	060505104	5,636,870	115297	Sh		Shared - Other	1	115297
BANKRATE INC	COM	06646V958	2,396,000	50000	Sh	PUT	Shared - Other	1	50000
BARNES & NOBLE INC	COM	067774109	5,398,418	140328	Sh		Shared - Other	1	140328
BARNES & NOBLE INC	COM	067774909	1,154,100	30000	Sh	CALL	Shared - Other	1	30000
BARR PHARMACEUTICALS INC	COM	068306109	887,614	17671	Sh		Shared - Other	1	17671
BARR PHARMACEUTICALS INC	COM	068306909	6,961,878	138600	Sh	CALL	Shared - Other	1	138600
BARRETT BILL CORP	COM	06846N104	7,211,314	195800	Sh		Shared - Other	1	195800
BARRETT BILL CORP	COM	06846N904	1,104,900	30000	Sh	CALL	Shared - Other	1	30000
BARRICK GOLD CORP	COM	067901108	10,755,900	370000	Sh		Shared - Other	1	370000
BARRICK GOLD CORP	COM	067901908	1,453,500	50000	Sh	CALL	Shared - Other	1	50000
BAUSCH & LOMB INC	COM	071707103	15,624,000	225000	Sh		Shared - Other	1	225000
BAUSCH & LOMB INC	COM	071707903	20,950,048	301700	Sh	CALL	Shared - Other	1	301700
BAUSCH & LOMB INC	COM	071707953	6,944,000	100000	Sh	PUT	Shared - Other	1	100000
BEA SYS INC	COM	073325102	78,695,692	5748407	Sh		Shared - Other	1	5748407
BEA SYS INC	COM	073325902	5,476,000	400000	Sh	CALL	Shared - Other	1	400000
BEACON ROOFING SUPPLY INC	COM	073685109	1,699,000	100000	Sh		Shared - Other	1	100000
BEAR STEARNS COS INC	COM	073902108	3,618,300	25845	Sh		Shared - Other	1	25845
BEARINGPOINT INC	COM	074002106	49,284,020	6742000	Sh		Shared - Other	1	6742000
BEBE STORES INC	COM	075571109	19,221,462	1200591	Sh		Shared - Other	1	1200591
BEBE STORES INC	COM	075571909	4,322,700	270000	Sh	CALL	Shared - Other	1	270000
BECKMAN COULTER INC	COM	075811959	3,234,000	50000	Sh	PUT	Shared - Other	1	50000
BECTON DICKINSON & CO	COM	075887959	4,470,000	60000	Sh	PUT	Shared - Other	1	60000
BED BATH & BEYOND INC	COM	075896100	575,840	16000	Sh		Shared - Other	1	16000
BED BATH & BEYOND INC	COM	075896950	17,995,000	500000	Sh	PUT	Shared - Other	1	500000
BENCHMARK ELECTRS INC	COM	08160H101	2,827,500	125000	Sh		Shared - Other	1	125000
BENTLEY PHARMACEUTICALS INC	COM	082657907	607,000	50000	Sh	CALL	Shared - Other	1	50000
BEST BUY INC	COM	086516101	938,067	20100	Sh		Shared - Other	1	20100
BEST BUY INC	COM	086516951	1,400,100	30000	Sh	PUT	Shared - Other	1	30000
BHP BILLITON LTD	COM	088606958	10,755,000	180000	Sh	PUT	Shared - Other	1	180000
BIG LOTS INC	COM	089302953	8,826,000	300000	Sh	PUT	Shared - Other	1	300000
BIODEL INC	COM	09064M105	4,057,990	204949	Sh		Shared - Other	1	204949
BIOMARIN PHARMACEUTICAL INC	COM	09062X953	29,425,000	550000	Sh	PUT	Shared - Other	1	550000
BIOMIMETIC THERAPEUTICS INC	COM	090911108	121,400	20000	Sh		Shared - Other	1	20000
BIOMIMETIC THERAPEUTICS INC	COM	09061G101	1,794,000	100000	Sh		Shared - Other	1	100000
BIOTECH HOLDERS TR	COM	09064X101	6,865,399	439245	Sh		Shared - Other	1	439245
BJ SVCS CO	COM	09067D951	29,417,500	175000	Sh	PUT	Shared - Other	1	175000
BJ SVCS CO	COM	055482103	711,000	25000	Sh		Shared - Other	1	25000
BJ SVCS CO	COM	055482903	1,990,800	70000	Sh	CALL	Shared - Other	1	70000
BLACKROCK INC	COM	09247K101	4,697,700	30000	Sh		Shared - Other	1	30000
BLOCK H & R INC	COM	093671105	3,032,187	129747	Sh		Shared - Other	1	129747
BLOCK H & R INC	COM	093671905	2,804,400	120000	Sh	CALL	Shared - Other	1	120000
BLOCKBUSTER INC	COM	093679108	6,855,917	1590700	Sh		Shared - Other	1	1590700
BLUE COAT SYSTEMS INC	COM	09534T908	3,714,000	75000	Sh	CALL	Shared - Other	1	75000
BLUEGREEN CORP	COM	096231105	341,675	29228	Sh		Shared - Other	1	29228
BLUELINK HLDGS INC	COM	09624H109	1,049,000	100000	Sh		Shared - Other	1	100000
BLUEPHOENIX SOLUTIONS LTD	COM	M20157109	4,161,500	350000	Sh		Shared - Other	1	350000
BMC SOFTWARE INC	COM	055921100	3,216,648	106160	Sh		Shared - Other	1	106160
BMC SOFTWARE INC	COM	055921950	1,515,000	50000	Sh	PUT	Shared - Other	1	50000
BMC SOFTWARE INC	COM	055921100	3,030,000	100000	Sh		Shared - Other	1	100000
BOEING CO	COM	097023105	12,573,497	130756	Sh		Shared - Other	1	130756
BOEING CO	COM	097023905	9,616,000	100000	Sh	CALL	Shared - Other	1	100000
BON-TON STORES INC	COM	09776J101	801,200	20000	Sh		Shared - Other	1	20000
BORDERS GROUP INC	COM	099709907	5,718,000	300000	Sh	CALL	Shared - Other	1	300000
BORDERS GROUP INC	COM	099709107	16,587,537	870280	Sh		Shared - Other	1	870280
BORLAND SOFTWARE CORP	COM	099849101	2,795,608	470641	Sh		Shared - Other	1	470641
BOSTON PROPERTIES INC	COM	101121101	510,650	5000	Sh		Shared - Other	1	5000
BOSTON SCIENTIFIC CORP	COM	101137107	1,851,845	120720	Sh		Shared - Other	1	120720
BOYD GAMING CORP	COM	103304101	2,951,400	60000	Sh		Shared - Other	1	60000
BP PLC	COM	055622954	3,607,000	50000	Sh	PUT	Shared - Other	1	50000
BRIGHTPOINT INC	COM	109473405	9,533,689	691348	Sh		Shared - Other	1	691348
BRISTOL MYERS SQUIBB CO	COM	110122908	15,780,000	500000	Sh	CALL	Shared - Other	1	500000
BROADBAND HOLDERS TR	COM	11130P104	22,428,000	1400000	Sh		Shared - Other	1	1400000
BROADCOM CORP	COM	111320107	10,896,210	372520	Sh		Shared - Other	1	372520
BROADCOM CORP	COM	111320907	16,087,500	550000	Sh	CALL	Shared - Other	1	550000
BROCADE COMMUNICATIONS SYS I	COM	111621958	977,500	125000	Sh	PUT	Shared - Other	1	125000 x
BROOKFIELD ASSET MGMT INC	COM	112585104	798,000	20000	Sh		Shared - Other	1	20000
BROWN SHOE INC NEW	COM	115736100	11,430,400	470000	Sh		Shared - Other	1	470000
BRUSH ENGINEERED MATLS INC	COM	117421107	5,878,600	140000	Sh		Shared - Other	1	140000
BUCKLE INC	COM	118440106	202,949	5151	Sh		Shared - Other	1	5151
BUCYRUS INTL INC NEW	COM	118759109	1,461,607	20650	Sh		Shared - Other	1	20650
BUILD A BEAR WORKSHOP	COM	120076104	6,282,749	240350	Sh		Shared - Other	1	240350
BUILDING MATLS HLDG CORP	COM	120113905	4,554,990	321000	Sh	CALL	Shared - Other	1	321000
BUILDING MATLS HLDG CORP	COM	120113105	14,267,676	1005474	Sh		Shared - Other	1	1005474

BUNGE LIMITED	COM	G16962955	10,140,000	120000		PUT	Shared - Other	1	120000
BURLINGTON NORTHN									
SANTA FE C	COM	12189T104	7,070,026	83040	Sh		Shared - Other	1	83040
BUSINESS OBJECTS S A	COM	12328X907	7,768,000	200000		CALL	Shared - Other	1	200000
BUSINESS OBJECTS S A	COM	12328X107	7,502,334	193160	Sh		Shared - Other	1	193160
C D W CORP	COM	12512N955	4,248,500	50000		PUT	Shared - Other	1	50000
C H ROBINSON WORLDWIDE									
INC	COM	12541W959	950,612	18100		PUT	Shared - Other	1	18100
CA INC	COM	12673F955	7,749,000	300000		PUT	Shared - Other	1	300000
CA INC	COM	12673F905	7,749,000	300000		CALL	Shared - Other	1	300000
CABLEVISION SYS CORP	COM	12686C109	4,371,897	120804	Sh		Shared - Other	1	120804
CABOT MICROELECTRONICS									
CORP	COM	12709P953	1,774,500	50000		PUT	Shared - Other	1	50000
CABOT OIL & GAS CORP	COM	127097103	3,239,539	87840	Sh		Shared - Other	1	87840
CACI INTL INC	COM	127190904	3,663,750	75000		CALL	Shared - Other	1	75000
CACI INTL INC	COM	127190304	13,738,672	281242	Sh		Shared - Other	1	281242
CADBURY SCHWEPPES PLC	COM	127209302	6,287,940	115800	Sh		Shared - Other	1	115800
CADENCE DESIGN SYSTEM									
INC	COM	127387108	658,800	30000	Sh		Shared - Other	1	30000
CADENCE DESIGN SYSTEM									
INC	COM	127387108	9,943,049	452780	Sh		Shared - Other	1	452780
CAI INTERNATIONAL INC	COM	12477X106	988,500	75000	Sh		Shared - Other	1	75000
CALLAWAY GOLF CO	COM	131193104	11,598,228	651220	Sh		Shared - Other	1	651220
CAMPBELL SOUP CO	COM	134429109	1,164,300	30000	Sh		Shared - Other	1	30000
CANADIAN NATL RY CO	COM	136375102	1,252,369	24590	Sh		Shared - Other	1	24590
CANADIAN PAC RY LTD	COM	13645T100	249,128	3620	Sh		Shared - Other	1	3620
CANADIAN SOLAR INC	COM	136635109	94,949	10101	Sh		Shared - Other	1	10101
CANARGO ENERGY CORP	COM	137225108	537,075	697500	Sh		Shared - Other	1	697500
CAPITAL ONE FINL CORP	COM	14040H955	3,137,600	40000		PUT	Shared - Other	1	40000
CAPITAL PRODUCT									
PARTNERS L P	COM	Y11082107	427,800	15000	Sh		Shared - Other	1	15000
CARACO PHARMACEUTICAL									
LABS L	COM	14075T107	13,765,103	906792	Sh		Shared - Other	1	906792
CARDINAL HEALTH INC	COM	14149Y108	7,064,000	100000	Sh		Shared - Other	1	100000
CARLISLE COS INC	COM	142339100	804,623	17300	Sh		Shared - Other	1	17300
CARRTER ACCESS CORP	COM	144460102	2,208,713	470941	Sh		Shared - Other	1	470941
CARTER INC	COM	146229909	1,297,000	50000		CALL	Shared - Other	1	50000
CARTER INC	COM	146229109	11,348,750	437500	Sh		Shared - Other	1	437500
CASTLE BRANDS INC	COM	148435100	112,000	20000	Sh		Shared - Other	1	20000
CASUAL MALE RETAIL GRP									
INC	COM	148711104	525,776	52057	Sh		Shared - Other	1	52057
CATERPILLAR INC DEL	COM	149123951	8,613,000	110000		PUT	Shared - Other	1	110000
CAVIUM NETWORKS INC	COM	14965A101	18,132,102	801596	Sh		Shared - Other	1	801596
CB RICHARD ELLIS GROUP									
INC	COM	12497T101	365,000	10000	Sh		Shared - Other	1	10000
CBeyond INC	COM	149847105	385,100	10000	Sh		Shared - Other	1	10000
CBS CORP NEW	COM	124857202	666,400	20000	Sh		Shared - Other	1	20000
CELESTICA INC	COM	15101Q108	1,254,375	200700	Sh		Shared - Other	1	200700
CEMEX SAB DE CV	COM	151290909	2,767,500	75000		CALL	Shared - Other	1	75000
CEMEX SAB DE CV	COM	151290889	5,535,000	150000	Sh		Shared - Other	1	150000
CENTEX CORP	COM	152312904	6,015,000	150000		CALL	Shared - Other	1	150000
CENTEX CORP	COM	152312104	4,918,666	122660	Sh		Shared - Other	1	122660
CENTILLIUM									
COMMUNICATIONS IN	COM	152319109	418,000	200000	Sh		Shared - Other	1	200000
CENTRAL GARDEN & PET									
CO	COM	153527106	5,411,012	441355	Sh		Shared - Other	1	441355
CENTURY ALUM CO	COM	156431108	6,009,300	110000	Sh		Shared - Other	1	110000
CEPHEID	COM	15670R107	730,005	50000	Sh		Shared - Other	1	50000
CERNER CORP	COM	156782954	5,547,000	100000		PUT	Shared - Other	1	100000
CHAMPION ENTERPRISES									
INC	COM	158496109	983,000	100000	Sh		Shared - Other	1	100000
CHAPARRAL STL CO DEL	COM	159423102	7,187,000	100000	Sh		Shared - Other	1	100000
CHARLOTTE RUSSE HLDG									
INC	COM	161048103	2,283,950	85000	Sh		Shared - Other	1	85000
CHARTER COMMUNICATIONS									
INC D	COM	16117M107	810,640	200158	Sh		Shared - Other	1	200158
CHECK POINT SOFTWARE									
TECH LT	COM	M22465104	18,234,519	799409	Sh		Shared - Other	1	799409
CHECK POINT SOFTWARE									
TECH LT	COM	M22465904	17,791,800	780000		CALL	Shared - Other	1	780000
CHEESECAKE FACTORY INC	COM	163072101	4,904,000	200000	Sh		Shared - Other	1	200000
CHEMTURA CORP	COM	163893900	6,110,500	550000		CALL	Shared - Other	1	550000
CHEMTURA CORP	COM	163893100	27,888,089	2510179	Sh		Shared - Other	1	2510179
CHESAPEAKE ENERGY CORP	COM	165167957	2,768,000	80000		PUT	Shared - Other	1	80000
CHEVRON CORP NEW	COM	166764100	231,070	2743	Sh		Shared - Other	1	2743
CHICAGO BRIDGE & IRON									
CO N V	COM	167250109	1,890,774	50100	Sh		Shared - Other	1	50100
CHICAGO MERCANTILE									
HLDGS INC	COM	167760107	9,351,300	17500	Sh		Shared - Other	1	17500
CHICOS FAS INC	COM	168615102	1,740,310	71500	Sh		Shared - Other	1	71500
CHILDRENS PL RETAIL									
STORES I	COM	168905107	1,833,220	35500	Sh		Shared - Other	1	35500
CHINA BAK BATTERY INC	COM	16936Y100	697,099	177379	Sh		Shared - Other	1	177379
CHINA GREENTECH CORP LTD	COM	16938P107	1,338,000	100000	Sh		Shared - Other	1	100000
CHIPMOS TECH BERMUDA									
LTD	COM	G2110R106	431,400	60000	Sh		Shared - Other	1	60000
CHIPOTLE MEXICAN GRILL									
INC	COM	169656955	4,264,000	50000		PUT	Shared - Other	1	50000
CHOICEPOINT INC	COM	170388102	2,127,212	50111	Sh		Shared - Other	1	50111
CHRISTOPHER & BANKS									
CORP	COM	171046105	3,001,250	175000	Sh		Shared - Other	1	175000
CHUBB CORP	COM	171232101	702,196	12970	Sh		Shared - Other	1	12970
CHUNGHWA TELECOM CO LTD	COM	17133Q205	1,895,430	100500	Sh		Shared - Other	1	100500
CIGNA CORP	COM	125509109	2,655,387	50850	Sh		Shared - Other	1	50850

CINTAS CORP	COM	172908905	2,562,950	65000		CALL	Shared - Other	1	65000
CIRCUIT CITY STORE INC	COM	172737108	3,332,680	221000	Sh		Shared - Other	1	221000
CIRCUIT CITY STORE INC	COM	172737908	3,317,600	220000		CALL	Shared - Other	1	220000
CISCO SYS INC	COM	17275R102	71,074,453	2552045	Sh		Shared - Other	1	2552045
CIT GROUP INC	COM	125581958	6,031,300	110000		PUT	Shared - Other	1	110000
CIT GROUP INC	COM	125581108	2,863,539	71861	Sh		Shared - Other	1	71861
CITIGROUP INC	COM	172967101	10,974,162	213963	Sh		Shared - Other	1	213963
CITRIX SYS INC	COM	177376100	2,188,550	65000	Sh		Shared - Other	1	65000
CITRIX SYS INC	COM	177376950	15,151,500	450000		PUT	Shared - Other	1	450000
CITY NATL CORP	COM	178566955	3,804,500	50000		PUT	Shared - Other	1	50000
CKX INC	COM	12562M106	2,414,354	174700	Sh		Shared - Other	1	174700
CLAYMONT STEEL HOLDINGS INC	COM	18382P104	2,029,612	94886	Sh		Shared - Other	1	94886
CLECO CORP NEW	COM	12561W105	9,129,680	372640	Sh		Shared - Other	1	372640
CLEVELAND BIOLABS INC	COM	185860103	438,400	40000	Sh		Shared - Other	1	40000
CLEVELAND CLIFFS INC	COM	185896107	3,393,791	43695	Sh		Shared - Other	1	43695
CLOROX CO DEL	COM	189054109	3,163,374	50940	Sh		Shared - Other	1	50940
CMS ENERGY CORP	COM	125896100	21,291,880	1237900	Sh		Shared - Other	1	1237900
CNX GAS CORP	COM	12618H309	3,613,860	118100	Sh		Shared - Other	1	118100
COACH INC	COM	189754104	6,161,932	130026	Sh		Shared - Other	1	130026
COACH INC	COM	189754954	2,369,500	50000		PUT	Shared - Other	1	50000
COCA COLA CO	COM	191216100	16,274,583	311118	Sh		Shared - Other	1	311118
COEUR D'ALENE MINES CORP IDA	COM	192108108	2,964,263	825700	Sh		Shared - Other	1	825700
COGENT INC	COM	19239Y108	4,407,000	300000	Sh		Shared - Other	1	300000
COGNIZANT TECHNOLOGY SOLUTION	COM	192446102	89,274,900	1190332	Sh		Shared - Other	1	1190332
COGNOS INC	COM	19244C109	7,223,475	182050	Sh		Shared - Other	1	182050
COHEN & STEERS INC	COM	19247A100	3,111,020	71600	Sh		Shared - Other	1	71600
COLDWATER CREEK INC	COM	193068903	3,484,500	150000		CALL	Shared - Other	1	150000
COLDWATER CREEK INC	COM	193068103	3,143,321	135313	Sh		Shared - Other	1	135313
COLGATE PALMOLIVE CO	COM	194162103	17,955,668	276880	Sh		Shared - Other	1	276880
COLUMBIA LABS INC	COM	197779101	192,800	80000	Sh		Shared - Other	1	80000
COMCAST CORP NEW	COM	20030N200	3,900,895	139517	Sh		Shared - Other	1	139517
COMCAST CORP NEW	COM	20030N101	2,755,760	98000	Sh		Shared - Other	1	98000
COMERICA INC	COM	200340107	346,710	5830	Sh		Shared - Other	1	5830
COMMERCE ENERGY GROUP INC	COM	20061Q106	239,624	119812	Sh		Shared - Other	1	119812
COMMAVULT SYSTEMS INC	COM	204166102	12,449,287	720862	Sh		Shared - Other	1	720862
COMPANHIA VALE DO RIO DOCE	COM	204412209	17,823,386	400076	Sh		Shared - Other	1	400076
COMPUTER SCIENCES CORP	COM	205363904	4,436,250	75000		CALL	Shared - Other	1	75000
COMPUTER SCIENCES CORP	COM	205363104	426,235	7206	Sh		Shared - Other	1	7206
COMTECH GROUP INC	COM	205821200	3,303,420	200086	Sh		Shared - Other	1	200086
CONVERGE INC	COM	205859101	310,100	10000	Sh		Shared - Other	1	10000
CONAGRA FOODS INC	COM	205887102	4,969,100	185000	Sh		Shared - Other	1	185000
CONCURRENT COMPUTER CORP NEW	COM	206710204	4,603,678	2571887	Sh		Shared - Other	1	2571887
CONEXANT SYSTEMS INC	COM	207142100	3,588,131	2600095	Sh		Shared - Other	1	2600095
CONOCOPHILLIPS	COM	20825C954	5,887,500	75000		PUT	Shared - Other	1	75000
CONSOL ENERGY INC	COM	20854P109	4,149,900	90000	Sh		Shared - Other	1	90000
CONSOL ENERGY INC	COM	20854P909	3,227,700	70000		CALL	Shared - Other	1	70000
CONSOLIDATED EDISON INC	COM	209115104	1,553,166	34423	Sh		Shared - Other	1	34423
CONSTELLATION BRANDS INC	COM	21036P958	1,942,400	80000		PUT	Shared - Other	1	80000
CONSTELLATION ENERGY GROUP I	COM	210371100	8,717,000	100000	Sh		Shared - Other	1	100000
CONTINENTAL AIRLIS INC	COM	210795308	411,317	12144	Sh		Shared - Other	1	12144
CONVERA CORP	COM	211919105	106,419	24408	Sh		Shared - Other	1	24408
COPART INC	COM	217204106	611,800	20000	Sh		Shared - Other	1	20000
CORINTHIAN COLLEGES INC	COM	218868107	407,250	25000	Sh		Shared - Other	1	25000
CORN PRODS INTL INC	COM	219023108	454,500	10000	Sh		Shared - Other	1	10000
CORNING INC	COM	219350105	21,841,673	854860	Sh		Shared - Other	1	854860
COST PLUS INC CALIF	COM	221485105	361,697	42653	Sh		Shared - Other	1	42653
COSTCO WHSL CORP NEW	COM	22160K905	7,022,400	120000		CALL	Shared - Other	1	120000
COSTCO WHSL CORP NEW	COM	22160K105	5,029,209	85940	Sh		Shared - Other	1	85940
COTT CORP QUE	COM	22163N106	431,700	30000	Sh		Shared - Other	1	30000
COUNTRYWIDE FINANCIAL CORP	COM	222372954	5,089,000	140000		PUT	Shared - Other	1	140000
COUNTRYWIDE FINANCIAL CORP	COM	222372104	3,177,615	106867	Sh		Shared - Other	1	106867
COVANCE INC	COM	222816950	6,856,000	100000		PUT	Shared - Other	1	100000
COVENANT TRANSN GROUP INC	COM	22284P105	184,680	16200	Sh		Shared - Other	1	16200
CROCS INC	COM	227046109	215,000	5000	Sh		Shared - Other	1	5000
CROCS INC	COM	227046959	1,721,200	40000		PUT	Shared - Other	1	40000
CROCS INC	COM	227046909	1,721,200	40000		CALL	Shared - Other	1	40000
CROWN CRAFTS INC	COM	228309100	263,948	60400	Sh		Shared - Other	1	60400
CSX CORP	COM	126408953	901,600	20000		PUT	Shared - Other	1	20000
CSX CORP	COM	126408103	8,211,277	182149	Sh		Shared - Other	1	182149
CTRIIP COM INTL LTD	COM	22943F100	25,366,038	322600	Sh		Shared - Other	1	322600
CUBIST PHARMACEUTICALS INC	COM	229678907	3,942,000	200000		CALL	Shared - Other	1	200000
CUBIST PHARMACEUTICALS INC	COM	229678107	3,449,250	175000	Sh		Shared - Other	1	175000
CUMMINS INC	COM	231021106	1,366,335	13500	Sh		Shared - Other	1	13500
CUTERA INC	COM	232109908	2,492,000	100000		CALL	Shared - Other	1	100000
CV THERAPEUTICS INC	COM	126667104	6,948,460	526000	Sh		Shared - Other	1	526000
CV THERAPEUTICS INC	COM	126667904	7,228,512	547200		CALL	Shared - Other	1	547200
CVS CAREMARK CORPORATION	COM	126650100	6,746,786	185097	Sh		Shared - Other	1	185097
CVS CAREMARK CORPORATION	COM	126650900	3,645,000	100000		CALL	Shared - Other	1	100000

CYNOSURE INC	COM	232577205	2,185,800	60000	Sh		Shared - Other	1	60000
CYPRESS SEMICONDUCTOR CORP	COM	232806109	5,831,816	250400	Sh		Shared - Other	1	250400
CYTEC INDS INC	COM	232820100	1,594,250	25000	Sh		Shared - Other	1	25000
D R HORTON INC	COM	23331A109	2,718,851	136420	Sh		Shared - Other	1	136420
DARTRONICS INC	COM	234264109	1,404,792	65400	Sh		Shared - Other	1	65400
DANKA BUSINESS SYS PLC	COM	236277109	2,726,513	2478648	Sh		Shared - Other	1	2478648
DARLING INTL INC	COM	237266101	228,500	25000	Sh		Shared - Other	1	25000
DELGATH SYS INC	COM	24661F104	862,125	192010	Sh		Shared - Other	1	192010
DELL INC	COM	24702R901	7,137,500	250000	CALL		Shared - Other	1	250000
DELL INC	COM	24702R951	7,137,500	250000	PUT		Shared - Other	1	250000
DELTA PETE CORP	COM	247907207	3,564,200	177500	Sh		Shared - Other	1	177500
DENNYS CORP	COM	24869F104	1,780,000	400000	Sh		Shared - Other	1	400000
DEVON ENERGY CORP NEW	COM	25179M103	2,489,622	31800	Sh		Shared - Other	1	31800
DIAGEO P L C	COM	25243Q205	1,249,650	15000	Sh		Shared - Other	1	15000
DIAMONDS TR	COM	252787956	99,308,000	740000	PUT		Shared - Other	1	740000
DIANA SHIPPING INC	COM	Y2066G104	409,696	18290	Sh		Shared - Other	1	18290
DIEBOLD INC	COM	253651103	3,132,000	60000	Sh		Shared - Other	1	60000
DIGITAL RIV INC	COM	25388B104	1,851,630	40920	Sh		Shared - Other	1	40920
DIGITAL RIV INC	COM	25388B954	24,208,750	535000	PUT		Shared - Other	1	535000
DIVX INC	COM	255413106	300,000	20000	Sh		Shared - Other	1	20000
DOBSON COMMUNICATIONS CORP	COM	256069105	1,333,200	120000	Sh		Shared - Other	1	120000
DOLLAR THRIFTY AUTOMOTIVE GP	COM	256743105	6,534,400	160000	Sh		Shared - Other	1	160000
DOMINION RES INC VA NEW	COM	25746U109	19,851,300	230000	Sh		Shared - Other	1	230000
DOMINOS PIZZA INC	COM	25754A201	1,372,077	75100	Sh		Shared - Other	1	75100
DOMTAR CORP	COM	257559104	3,013,200	270000	Sh		Shared - Other	1	270000
DONNELLEY R R & SONS CO	COM	257867101	3,515,608	80800	Sh		Shared - Other	1	80800
DOUBLE-TAKE SOFTWARE INC	COM	258598101	4,923,000	300000	Sh		Shared - Other	1	300000
DOW CHEM CO	COM	260543903	14,150,400	320000	CALL		Shared - Other	1	320000
DOW CHEM CO	COM	260543103	31,195,132	705453	Sh		Shared - Other	1	705453
DPL INC	COM	233293109	4,264,036	150460	Sh		Shared - Other	1	150460
DRDGOLD LTD	COM	26152H103	949,130	1300000	Sh		Shared - Other	1	1300000
DRESS BARN INC	COM	261570105	2,052,000	100000	Sh		Shared - Other	1	100000
DSP GROUP INC	COM	23332B106	6,141,000	300000	Sh		Shared - Other	1	300000
DST SYS INC DEL	COM	233326107	1,251,597	15801	Sh		Shared - Other	1	15801
DU PONT E I DE NEMOURS & CO	COM	263534959	2,033,600	40000	PUT		Shared - Other	1	40000
E M C CORP MASS	COM	268648102	1,810,000	100000	Sh		Shared - Other	1	100000
E M C CORP MASS	COM	268648902	8,145,000	450000	CALL		Shared - Other	1	450000
E TRADE FINANCIAL CORP	COM	269246104	14,364,751	650283	Sh		Shared - Other	1	650283
E TRADE FINANCIAL CORP	COM	269246904	4,418,000	200000	CALL		Shared - Other	1	200000
EARTHLINK INC	COM	270321102	2,241,232	300031	Sh		Shared - Other	1	300031
EASTMAN KODAK CO	COM	277461959	1,391,500	50000	PUT		Shared - Other	1	50000
EATON CORP	COM	278058902	5,580,000	60000	CALL		Shared - Other	1	60000
EATON CORP	COM	278058102	6,975,000	75000	Sh		Shared - Other	1	75000
EBAY INC	COM	278642903	7,562,300	235000	CALL		Shared - Other	1	235000
EBAY INC	COM	278642103	19,987,835	621126	Sh		Shared - Other	1	621126
ECHOSTAR COMMUNICATIONS NEW	COM	278762109	3,671,271	84650	Sh		Shared - Other	1	84650
ECI TELECOM LTD	COM	268258100	2,973,750	325000	Sh		Shared - Other	1	325000
EDGAR ONLINE INC	COM	279765101	1,351,218	500451	Sh		Shared - Other	1	500451
EDWARDS LIFESCIENCES CORP	COM	28176E958	7,894,400	160000	PUT		Shared - Other	1	160000
EINSTEIN NOAH REST GROUP INC	COM	28257U104	1,233,139	73010	Sh		Shared - Other	1	73010
EL PASO CORP	COM	28336L109	1,190,593	69100	Sh		Shared - Other	1	69100
EL PASO ELEC CO	COM	283677854	4,270,984	173900	Sh		Shared - Other	1	173900
ELAN PLC	COM	284131908	6,579,000	300000	CALL		Shared - Other	1	300000
ELECTRO SCIENTIFIC INDS	COM	285229100	1,250,038	60098	Sh		Shared - Other	1	60098
ELECTRONIC ARTS INC	COM	285512909	5,678,400	120000	CALL		Shared - Other	1	120000
ELECTRONIC ARTS INC	COM	285512109	24,902,576	526259	Sh		Shared - Other	1	526259
ELECTRONIC DATA SYS NEW	COM	285661954	2,773,000	100000	PUT		Shared - Other	1	100000
ELECTRONICS FOR IMAGING INC	COM	286082102	5,484,416	194345	Sh		Shared - Other	1	194345
ELECTRONICS FOR IMAGING INC	COM	286082902	1,411,000	50000	CALL		Shared - Other	1	50000
EMAGEON INC	COM	29076V109	16,237,254	1800139	Sh		Shared - Other	1	1800139
EMAGEON INC	COM	29076V909	10,463,200	1160000	CALL		Shared - Other	1	1160000
EMCORE CORP	COM	290846104	1,899,728	348574	Sh		Shared - Other	1	348574
EMERSON ELEC CO	COM	291011104	2,710,188	57910	Sh		Shared - Other	1	57910
EMMIS COMMUNICATIONS CORP	COM	291525103	1,443,585	156741	Sh		Shared - Other	1	156741
EMPIRE RES INC DEL	COM	29206E100	772,000	80000	Sh		Shared - Other	1	80000
EMPLOYERS HOLDINGS INC	COM	292218104	213,611	10057	Sh		Shared - Other	1	10057
ENDO PHARMACEUTICALS HLDGS I	COM	29264F905	5,134,500	150000	CALL		Shared - Other	1	150000
ENDO PHARMACEUTICALS HLDGS I	COM	29264F205	7,701,750	225000	Sh		Shared - Other	1	225000
ENERGY CONVERSION DEVICES IN	COM	292659109	1,086,405	35250	Sh		Shared - Other	1	35250
ENERNOC INC	COM	292764107	3,813,000	100000	Sh		Shared - Other	1	100000
ENI S P A	COM	26874R108	1,808,750	25000	Sh		Shared - Other	1	25000
ENSCO INTL INC	COM	26874Q950	3,050,500	50000	PUT		Shared - Other	1	50000
ENSCO INTL INC	COM	26874Q100	915,150	15000	Sh		Shared - Other	1	15000
ENTERGY CORP NEW	COM	29364G103	6,754,677	62922	Sh		Shared - Other	1	62922
ENTERTAINMENT DIST CO INC	COM	29382J105	3,031,417	1523325	Sh		Shared - Other	1	1523325
ENTRAVISION COMMUNICATIONS C	COM	29382R107	261,793	25100	Sh		Shared - Other	1	25100
ENTRUST INC	COM	293848107	13,096,253	3225678	Sh		Shared - Other	1	3225678
ENZON PHARMACEUTICALS INC	COM	293904108	5,749,544	732426	Sh		Shared - Other	1	732426

EQUINIX INC	COM	29444U952	2,744,100	30000		PUT	Shared - Other	1	30000
EQUITY RESIDENTIAL	COM	29476L107	912,600	20000	Sh		Shared - Other	1	20000
ERICSSON L M TEL CO	COM	294821908	11,967,000	300000	Sh	CALL	Shared - Other	1	300000
ERICSSON L M TEL CO	COM	294821608	3,390,650	85000	Sh		Shared - Other	1	85000
ESCO TECHNOLOGIES INC	COM	296315104	5,076,400	140000	Sh		Shared - Other	1	140000
ESPEED INC	COM	296643109	864,000	100000	Sh		Shared - Other	1	100000
EURAND N V	COM	N31010106	11,544,951	736755	Sh		Shared - Other	1	736755
EVCI CAREER COLLEGES									
INC	COM	26926F100	103,200	120000	Sh		Shared - Other	1	120000
EVERGREEN SOLAR INC	COM	30033R108	744,000	80000	Sh		Shared - Other	1	80000
EXAR CORP	COM	300645108	7,599,019	567091	Sh		Shared - Other	1	567091
EXCO RESOURCES INC	COM	269279402	1,927,120	110500	Sh		Shared - Other	1	110500
EXELIXIS INC	COM	30161Q104	2,117,500	175000	Sh		Shared - Other	1	175000
EXELIXIS INC	COM	30161Q904	2,299,000	190000	Sh	CALL	Shared - Other	1	190000
EXELON CORP	COM	30161N101	380,424	5240	Sh		Shared - Other	1	5240
EXPEDITORS INTL WASH									
INC	COM	302130109	1,015,980	24600	Sh		Shared - Other	1	24600
EXPRESS SCRIPTS INC	COM	302182950	5,001,000	100000	Sh	PUT	Shared - Other	1	100000
EXTREME NETWORKS INC	COM	30226D106	13,071,910	3227632	Sh		Shared - Other	1	3227632
F5 NETWORKS INC	COM	315616102	60,450,000	750000	Sh		Shared - Other	1	750000
FAIRCHILD SEMICONDUCTOR									
INTL	COM	303726103	8,114,400	420000	Sh		Shared - Other	1	420000
FBR CAPITAL MARKETS									
CORP	COM	30247C301	1,098,500	65000	Sh		Shared - Other	1	65000
FEDERAL HOME LN MTG									
CORP	COM	313400301	1,354,824	22320	Sh		Shared - Other	1	22320
FEDERAL NATL MTG ASSN	COM	313586109	2,286,550	35000	Sh		Shared - Other	1	35000
FEDERAL NATL MTG ASSN	COM	313586959	3,266,500	50000	Sh	PUT	Shared - Other	1	50000
FIBERTOWER CORP	COM	31567R100	5,077,358	1172600	Sh		Shared - Other	1	1172600
FIFTH THIRD BANCORP	COM	316773100	50,000	50000	Sh		Shared - Other	1	50000
FINISAR	COM	31787A101	376,945	99721	Sh		Shared - Other	1	99721
FINISH LINE INC	COM	317923100	911,000	100000	Sh		Shared - Other	1	100000
FIRST SOLAR INC	COM	336433107	40,426,164	542347	Sh		Shared - Other	1	542347
FLAMEL TECHNOLOGIES SA	COM	338488959	1,572,750	75000	Sh	PUT	Shared - Other	1	75000
FLEETWOOD ENTERPRISES									
INC	COM	339099103	634,405	70100	Sh		Shared - Other	1	70100
FLEXTRONICS INTL LTD	COM	Y2573F102	152,323	14104	Sh		Shared - Other	1	14104
FLOWERS FOODS INC	COM	343498101	667,200	20000	Sh		Shared - Other	1	20000
FOCUS MEDIA HLDG LTD	COM	34415V109	17,700,041	350600	Sh		Shared - Other	1	350600
FOMENTO ECONOMICO									
MEXICANO S	COM	344419106	3,932,983	100025	Sh		Shared - Other	1	100025
FOOT LOCKER INC	COM	344849104	5,450,000	250000	Sh		Shared - Other	1	250000
FORCE PROTECTION INC	COM	345203202	629,314	30490	Sh		Shared - Other	1	30490
FORMFACTOR INC	COM	346375108	44,429,226	1160032	Sh		Shared - Other	1	1160032
FORMFACTOR INC	COM	346375908	3,830,000	100000	Sh	CALL	Shared - Other	1	100000
FORTUNE BRANDS INC	COM	349631101	3,294,800	40000	Sh		Shared - Other	1	40000
FORWARD AIR CORP	COM	349853101	511,350	15000	Sh		Shared - Other	1	15000
FORWARD INDS INC N Y	COM	349862300	456,832	137600	Sh		Shared - Other	1	137600
FOUNDATION COAL HLDGS									
INC	COM	35039W900	7,315,200	180000	Sh	CALL	Shared - Other	1	180000
FOUNDATION COAL HLDGS									
INC	COM	35039W100	4,775,200	117500	Sh		Shared - Other	1	117500
FOUNDRY NETWORKS INC	COM	35063R900	9,996,000	600000	Sh	CALL	Shared - Other	1	600000
FOUNDRY NETWORKS INC	COM	35063R100	8,140,143	488604	Sh		Shared - Other	1	488604
FPL GROUP INC	COM	302571104	5,674,000	100000	Sh		Shared - Other	1	100000
FRANKLIN RES INC	COM	354613951	5,298,800	40000	Sh	PUT	Shared - Other	1	40000
FREEPORT-MCMORAN COPPER									
& GO	COM	35671D857	2,079,610	25110	Sh		Shared - Other	1	25110
FREEPORT-MCMORAN COPPER									
& GO	COM	35671D907	4,969,200	60000	Sh	CALL	Shared - Other	1	60000
FREIGHTCAR AMER INC	COM	357023100	1,914,509	40019	Sh		Shared - Other	1	40019
FSI INTL INC	COM	302633102	959,153	300675	Sh		Shared - Other	1	300675
FUELCELL ENERGY INC	COM	35952H106	799,690	100971	Sh		Shared - Other	1	100971
GAIAM INC	COM	36268Q103	729,200	40000	Sh		Shared - Other	1	40000
GALAXY ENERGY CORP	COM	36318B106	9,750	75000	Sh		Shared - Other	1	75000
GANNETT INC	COM	364730101	5,538,960	100800	Sh		Shared - Other	1	100800
GAP INC DEL	COM	364760108	10,222,320	535200	Sh		Shared - Other	1	535200
GAP INC DEL	COM	364760908	1,910,000	100000	Sh	CALL	Shared - Other	1	100000
GARMIN LTD	COM	G37260109	12,585,996	170150	Sh		Shared - Other	1	170150
GARMIN LTD	COM	G37260959	2,219,100	30000	Sh	PUT	Shared - Other	1	30000
GARTNER INC	COM	366651107	737,700	30000	Sh		Shared - Other	1	30000
GATEWAY INC	COM	367626108	318,000	200000	Sh		Shared - Other	1	200000
GEMSTAR-TV GUIDE INTL									
INC	COM	36866W106	11,120,066	2260176	Sh		Shared - Other	1	2260176
GENCORP INC	COM	368682100	5,238,456	400800	Sh		Shared - Other	1	400800
GENENTECH INC	COM	368710906	7,566,000	100000	Sh	CALL	Shared - Other	1	100000
GENENTECH INC	COM	368710406	1,967,160	26000	Sh		Shared - Other	1	26000
GENENTECH INC	COM	368710956	9,835,800	130000	Sh	PUT	Shared - Other	1	130000
GENERAL CABLE CORP DEL									
NEW	COM	369300908	1,136,250	15000	Sh	CALL	Shared - Other	1	15000
GENERAL CABLE CORP DEL									
NEW	COM	369300108	8,332,500	110000	Sh		Shared - Other	1	110000
GENERAL DYNAMICS CORP	COM	369550108	8,008,946	102390	Sh		Shared - Other	1	102390
GENERAL ELECTRIC CO	COM	369604903	7,656,000	200000	Sh	CALL	Shared - Other	1	200000
GENERAL ELECTRIC CO	COM	369604103	14,303,322	373650	Sh		Shared - Other	1	373650
GENERAL MLS INC	COM	370334104	2,921,000	50000	Sh		Shared - Other	1	50000
GENERAL MTRS CORP	COM	370442105	1,043,280	27600	Sh		Shared - Other	1	27600
GENERAL MTRS CORP	COM	370442905	1,890,000	50000	Sh	CALL	Shared - Other	1	50000
GENESEE & WYO INC	COM	371559105	1,193,600	40000	Sh		Shared - Other	1	40000
GENESIS LEASE LTD	COM	37183T107	4,795,000	175000	Sh		Shared - Other	1	175000
GENOMIC HEALTH INC	COM	37244C101	1,880,000	100000	Sh		Shared - Other	1	100000
GEN-PROBE INC NEW	COM	36866T903	3,021,000	50000	Sh	CALL	Shared - Other	1	50000
GEN-PROBE INC NEW	COM	36866T103	3,021,000	50000	Sh		Shared - Other	1	50000
GENZYME CORP	COM	372917904	6,440,000	100000	Sh	CALL	Shared - Other	1	100000

GEORGIA GULF CORP	COM	373200903	1,358,250	75000		CALL	Shared - Other	1	75000
GETTY IMAGES INC	COM	374276103	956,200	20000	Sh		Shared - Other	1	20000
GIGAMEDIA LTD	COM	Y2711Y104	5,732,572	425265	Sh		Shared - Other	1	425265
GILEAD SCIENCES INC	COM	375558903	7,370,100	190000		CALL	Shared - Other	1	190000
GLATFELTER	COM	377316104	879,273	64700	Sh		Shared - Other	1	64700
GLOBAL PMTS INC	COM	37940X102	2,421,029	61060	Sh		Shared - Other	1	61060
GLOBAL SANTAFE CORP	COM	G3930E901	722,500	10000		CALL	Shared - Other	1	10000
GLOBAL SANTAFE CORP	COM	G3930E101	1,806,250	25000	Sh		Shared - Other	1	25000
GLOBAL SANTAFE CORP	COM	G3930E951	2,890,000	40000		PUT	Shared - Other	1	40000
GMARKET INC	COM	38012G100	2,331,600	120000	Sh		Shared - Other	1	120000
GOLD CORP INC NEW	COM	380956909	2,369,000	100000		CALL	Shared - Other	1	100000
GOLD CORP INC NEW	COM	380956409	2,369,000	100000	Sh		Shared - Other	1	100000
GOLDEN STAR RES LTD CDA	COM	38119T104	8,386,114	2260408	Sh		Shared - Other	1	2260408
GOLDMAN SACHS GROUP INC	COM	38141G954	95,370,000	440000		PUT	Shared - Other	1	440000
GOLDMAN SACHS GROUP INC	COM	38141G904	5,418,750	25000		CALL	Shared - Other	1	25000
GOLDMAN SACHS GROUP INC	COM	38141G104	23,801,751	109812	Sh		Shared - Other	1	109812
GOODRICH CORP	COM	382388106	2,978,000	50000	Sh		Shared - Other	1	50000
GOODYEAR TIRE & RUBR CO	COM	382550101	608,300	17500	Sh		Shared - Other	1	17500
GOOGLE INC	COM	38259P908	7,840,500	15000		CALL	Shared - Other	1	15000
GOOGLE INC	COM	38259P958	7,840,500	15000		PUT	Shared - Other	1	15000
GOOGLE INC	COM	38259P508	74,354,089	142250	Sh		Shared - Other	1	142250
GRANITE CONSTR INC	COM	387328107	1,017,253	15950	Sh		Shared - Other	1	15950
GRANT PRIDECO INC	COM	38821G101	2,918,124	54210	Sh		Shared - Other	1	54210
GREENBRIER COS INC	COM	393657101	7,539,890	249500	Sh		Shared - Other	1	249500
GROUP 1 AUTOMOTIVE INC	COM	398905109	2,420,400	60000	Sh		Shared - Other	1	60000
GRUPO TELEVISIA SA DE CV	COM	40049J206	4,141,500	150000	Sh		Shared - Other	1	150000
GULF ISLAND FABRICATION INC	COM	402307952	867,500	25000		PUT	Shared - Other	1	25000
H & E EQUIPMENT SERVICES INC	COM	404030108	4,097,503	147711	Sh		Shared - Other	1	147711
HALLIBURTON CO	COM	406216901	8,625,000	250000		CALL	Shared - Other	1	250000
HALLIBURTON CO	COM	406216101	5,378,550	155900	Sh		Shared - Other	1	155900
HALOZYME THERAPEUTICS INC	COM	40637H109	1,846,000	200000	Sh		Shared - Other	1	200000
HANOVER COMPRESSOR CO	COM	410768105	8,586,000	360000	Sh		Shared - Other	1	360000
HANSEN NAT CORP	COM	411310105	4,727,800	110000	Sh		Shared - Other	1	110000
HARMONIC INC	COM	413160102	6,472,288	729683	Sh		Shared - Other	1	729683
HARRIS CORP DEL	COM	413875105	4,556,398	83527	Sh		Shared - Other	1	83527
HARRIS STRATEX NETWORKS INC	COM	41457P106	452,035	25141	Sh		Shared - Other	1	25141
HARSCO CORP	COM	415864107	3,141,892	60421	Sh		Shared - Other	1	60421
HARTFORD FINL SVCS GROUP INC	COM	416515104	614,111	6234	Sh		Shared - Other	1	6234
HASBRO INC	COM	418056957	3,769,200	120000		PUT	Shared - Other	1	120000
HEALTH NET INC	COM	42222G108	223,872	4240	Sh		Shared - Other	1	4240
HEALTHSPRING INC	COM	42224N101	2,287,200	120000	Sh		Shared - Other	1	120000
HEARTLAND PMT SYS INC	COM	42235N108	588,067	20050	Sh		Shared - Other	1	20050
HEIDRICK & STRUGGLES INTL IN	COM	422819102	256,200	5000	Sh		Shared - Other	1	5000
HEINZ H J CO	COM	423074103	14,153,703	298161	Sh		Shared - Other	1	298161
HELIX ENERGY SOLUTIONS GRP I	COM	42330P107	4,489,875	112500	Sh		Shared - Other	1	112500
HERBALIFE LTD	COM	G4412G101	594,750	15000	Sh		Shared - Other	1	15000
HERCULES OFFSHORE INC	COM	427093909	6,398,288	197600		CALL	Shared - Other	1	197600
HERCULES OFFSHORE INC	COM	427093109	11,009,200	340000	Sh		Shared - Other	1	340000
HERSHEY CO	COM	427866108	4,555,800	90000	Sh		Shared - Other	1	90000
HESS CORP	COM	42809H107	1,591,920	27000	Sh		Shared - Other	1	27000
HEWLETT PACKARD CO	COM	428236103	17,893,959	401030	Sh		Shared - Other	1	401030
HIBBETT SPORTS INC	COM	428567951	2,190,400	80000		PUT	Shared - Other	1	80000
HILTON HOTELS CORP	COM	432848109	15,921,679	475700	Sh		Shared - Other	1	475700
HIMAX TECHNOLOGIES INC	COM	43289P106	1,846,400	320000	Sh		Shared - Other	1	320000
HI-TECH PHARMACAL INC	COM	42840B101	2,954,971	247485	Sh		Shared - Other	1	247485
HLTH CORPORATION	COM	40422Y901	9,479,166	676600		CALL	Shared - Other	1	676600
HOME DEPOT INC	COM	437076102	1,956,443	49719	Sh		Shared - Other	1	49719
HOME INNS & HOTELS MGMT INC	COM	43713W107	7,115,167	220900	Sh		Shared - Other	1	220900
HONEYWELL INTL INC	COM	438516106	5,987,573	106389	Sh		Shared - Other	1	106389
HOT TOPIC INC	COM	441339108	3,141,430	289000	Sh		Shared - Other	1	289000
HSBC HLDGS PLC	COM	404280956	18,216,345	198500		PUT	Shared - Other	1	198500
HUBBELL INC	EQUITY	443510201	5,422,000	100000	Sh		Shared - Other	1	100000
HUMAN GENOME SCIENCES INC	COM	444903108	2,050,708	229900	Sh		Shared - Other	1	229900
HUMAN GENOME SCIENCES INC	COM	444903908	6,600,800	740000		CALL	Shared - Other	1	740000
HUMANA INC	COM	444859102	295,109	4845	Sh		Shared - Other	1	4845
HUMANA INC	COM	444859952	9,136,500	150000		PUT	Shared - Other	1	150000
HUNTSMAN CORP	COM	447011907	3,646,500	150000		CALL	Shared - Other	1	150000
HUTCHINSON TECHNOLOGY INC	COM	448407906	5,643,000	300000		CALL	Shared - Other	1	300000
HUTCHINSON TECHNOLOGY INC	COM	448407106	27,658,845	1470433	Sh		Shared - Other	1	1470433
HYPERCOM CORP	COM	44913M105	1,776,546	300600	Sh		Shared - Other	1	300600
I D SYSTEMS INC	COM	449489103	2,935,068	228055	Sh		Shared - Other	1	228055
IAC INTERACTIVECORP	COM	44919P300	10,755,196	310754	Sh		Shared - Other	1	310754
IAC INTERACTIVECORP	COM	44919P900	6,922,000	200000		CALL	Shared - Other	1	200000
IAC INTERACTIVECORP	COM	44919P950	5,191,500	150000		PUT	Shared - Other	1	150000
ICON PUB LTD CO	COM	45103T107	2,799,360	64000	Sh		Shared - Other	1	64000
IDT CORP	COM	448947309	1,022,196	99050	Sh		Shared - Other	1	99050
IKANOS COMMUNICATIONS	COM	45173E105	10,645,561	1398891	Sh		Shared - Other	1	1398891
IKON OFFICE SOLUTIONS INC	COM	451713101	452,971	29018	Sh		Shared - Other	1	29018
IMAX CORP	COM	45245E109	353,210	83701	Sh		Shared - Other	1	83701
IMMUNOGEN INC	COM	45253H101	1,110,000	200000	Sh		Shared - Other	1	200000
IMMUNOMEDICS INC	COM	452907108	9,798,615	2361112	Sh		Shared - Other	1	2361112

IMMUNOMEDICS INC	COM	452907908	2,012,750	495000		CALL	Shared - Other	1	495000
INDEVUS PHARMACEUTICALS INC	COM	454072109	4,431,678	658496	Sh		Shared - Other	1	658496
INDYMAC BANCORP INC	COM	456607950	2,917,000	100000		PUT	Shared - Other	1	100000
INFINEON TECHNOLOGIES AG	COM	45662N103	25,714,399	1555620	Sh		Shared - Other	1	1555620
INFINEON TECHNOLOGIES AG	COM	45662N903	13,224,000	800000		CALL	Shared - Other	1	800000
INFOCUS CORP	COM	45665B106	855,903	383813	Sh		Shared - Other	1	383813
INFORMATICA CORP	COM	45666Q902	2,215,500	150000		CALL	Shared - Other	1	150000
INFORMATICA CORP	COM	45666Q102	1,435,378	97182	Sh		Shared - Other	1	97182
INFOSYS TECHNOLOGIES LTD	COM	456788108	29,450,536	584568	Sh		Shared - Other	1	584568
INGERSOLL-RAND COMPANY LTD	COM	G4776G101	13,430,900	245000	Sh		Shared - Other	1	245000
INGERSOLL-RAND COMPANY LTD	COM	G4776G951	5,070,850	92500		PUT	Shared - Other	1	92500
INGERSOLL-RAND COMPANY LTD	COM	G4776G901	4,111,500	75000		CALL	Shared - Other	1	75000
INNOVO GROUP INC	COM	457954600	4,582,129	2589627	Sh		Shared - Other	1	2589627
INPHONIC INC	COM	45772G105	13,269,936	2835517	Sh		Shared - Other	1	2835517
INPHONIC INC	COM	45772G905	5,604,000	1200000		CALL	Shared - Other	1	1200000
INPUT/OUTPUT INC	COM	457652105	3,122,000	200000	Sh		Shared - Other	1	200000
INSPIRE PHARMACEUTICALS INC	COM	457733103	2,158,912	341600	Sh		Shared - Other	1	341600
INSTEEL INDUSTRIES INC	COM	45774W108	1,803,384	100188	Sh		Shared - Other	1	100188
INTEGRAL SYS INC MD	COM	45810H107	1,716,553	70611	Sh		Shared - Other	1	70611
INTEGRATED DEVICE TECHNOLOGY	COM	458118106	9,264,477	606711	Sh		Shared - Other	1	606711
INTEGRYS ENERGY GROUP INC	COM	45822P105	10,655,938	210052	Sh		Shared - Other	1	210052
INTEL CORP	COM	458140100	25,863,778	1089254	Sh		Shared - Other	1	1089254
INTEL CORP	COM	458140950	4,746,000	200000		PUT	Shared - Other	1	200000
INTEL CORP	COM	458140900	26,103,000	1100000		CALL	Shared - Other	1	1100000
INTERACTIVE BROKERS GROUP IN	COM	45841N107	7,325,100	270000	Sh		Shared - Other	1	270000
INTERCONTINENTALEXCHANGE INC	COM	45865V100	3,696,250	25000	Sh		Shared - Other	1	25000
INTERDIGITAL COMMUNICATIONS	COM	45866A955	6,434,000	200000		PUT	Shared - Other	1	200000
INTERFACE INC	COM	458665106	377,200	20000	Sh		Shared - Other	1	20000
INTERNATIONAL BUSINESS MACHS	COM	459200101	3,498,931	33244	Sh		Shared - Other	1	33244
INTERNATIONAL GAME TECHNOLOG	COM	459902902	1,985,000	50000		CALL	Shared - Other	1	50000
INTERNATIONAL GAME TECHNOLOG	COM	459902102	6,352,000	160000	Sh		Shared - Other	1	160000
INTERNATIONAL RECTIFIER CORP	COM	460254905	9,687,600	260000		CALL	Shared - Other	1	260000
INTERNET INFRASTRUCTR HOLDS	COM	46059V104	6,065,144	1200200	Sh		Shared - Other	1	1200200
INTEROIL CORP	COM	460951106	3,534,185	186599	Sh		Shared - Other	1	186599
INTEROIL CORP	COM	460951906	757,600	40000		CALL	Shared - Other	1	40000
INTERPUBLIC GROUP COS INC	COM	460690100	6,195,900	543500	Sh		Shared - Other	1	543500
INTERPUBLIC GROUP COS INC	COM	460690900	6,270,000	550000		CALL	Shared - Other	1	550000
INTERSIL CORP	COM	46069S909	1,573,000	50000		CALL	Shared - Other	1	50000
INTERWOVEN INC	COM	46114T908	1,404,000	100000		CALL	Shared - Other	1	100000
INTEVAC INC	COM	461148108	3,228,331	151850	Sh		Shared - Other	1	151850
INTL PAPER CO	COM	460146903	8,591,000	220000		CALL	Shared - Other	1	220000
INTL PAPER CO	COM	460146953	214,775	5500		PUT	Shared - Other	1	5500
INTL PAPER CO	COM	460146103	2,073,828	53107	Sh		Shared - Other	1	53107
INVESCO PLC	COM	46127U104	3,761,175	145500	Sh		Shared - Other	1	145500
INVESTOOLS INC	COM	46145P103	1,095,600	110000	Sh		Shared - Other	1	110000
IOMEGA CORP	COM	462030305	867,690	186600	Sh		Shared - Other	1	186600
IONATRON INC	COM	462070103	20,295,651	5204013	Sh		Shared - Other	1	5204013
IONATRON INC	COM	462070903	1,525,290	391100		CALL	Shared - Other	1	391100
IPASS INC	COM	46261V108	2,256,492	416327	Sh		Shared - Other	1	416327
IPC HLDGS LTD	COM	G4933P101	2,421,750	75000	Sh		Shared - Other	1	75000
ISHARES INC	COM	464286848	4,353,000	300000	Sh		Shared - Other	1	300000
ISHARES INC	COM	464286731	2,987,200	186700	Sh		Shared - Other	1	186700
ISHARES SILVER TRUST	COM	46428Q109	1,976,000	16000	Sh		Shared - Other	1	16000
ISHARES TR	COM	464287951	13,908,000	200000		PUT	Shared - Other	1	200000
ISHARES TR	COM	464287901	15,484,000	200000		CALL	Shared - Other	1	200000
ISHARES TR	COM	464287951	24,708,000	300000		PUT	Shared - Other	1	300000
ISHARES TR	COM	464287951	128,173,200	1545000		PUT	Shared - Other	1	1545000
ISHARES TR	COM	464287432	10,397,554	122080	Sh		Shared - Other	1	122080
ISHARES TR	COM	464287951	8,077,000	100000		PUT	Shared - Other	1	100000
ISHARES TR	COM	464287951	34,789,500	270000		PUT	Shared - Other	1	270000
ISHARES TR	COM	464287951	37,507,200	480000		PUT	Shared - Other	1	480000
ISHARES TR	COM	464287951	65,166,750	495000		PUT	Shared - Other	1	495000
ISHARES TR	COM	464288752	1,096,110	34700	Sh		Shared - Other	1	34700
ISILON SYS INC	COM	46432L104	7,012,846	454789	Sh		Shared - Other	1	454789
ISIS PHARMACEUTICALS INC	COM	464330109	1,936,484	200050	Sh		Shared - Other	1	200050
ISIS PHARMACEUTICALS INC	COM	464330909	1,936,000	200000		CALL	Shared - Other	1	200000
ITT EDUCATIONAL SERVICES INC	COM	45068B959	5,869,000	50000		PUT	Shared - Other	1	50000
J CREW GROUP INC	COM	46612H952	2,704,500	50000		PUT	Shared - Other	1	50000
JA SOLAR HOLDINGS CO LTD	COM	466090107	8,429,975	250000	Sh		Shared - Other	1	250000
JABIL CIRCUIT INC	COM	466313903	10,152,200	460000		CALL	Shared - Other	1	460000
JABIL CIRCUIT INC	COM	466313103	20,211,706	915800	Sh		Shared - Other	1	915800
JAMBA INC	COM	47023A101	2,249,372	246102	Sh		Shared - Other	1	246102
JANUS CAP GROUP INC	COM	47102X955	2,784,000	100000		PUT	Shared - Other	1	100000
JANUS CAP GROUP INC	COM	47102X105	404,237	14520	Sh		Shared - Other	1	14520
JARDEN CORP	COM	471109108	9,462,200	220000	Sh		Shared - Other	1	220000
JAZZ PHARMACEUTICALS INC	COM	472147107	2,409,872	150617	Sh		Shared - Other	1	150617
JEFFERIES GROUP INC NEW	COM	472319102	2,023,500	75000	Sh		Shared - Other	1	75000
JETBLUE AWYS CORP	COM	477143101	9,400,482	800041	Sh		Shared - Other	1	800041
JETBLUE AWYS CORP	COM	477143901	4,700,000	400000		CALL	Shared - Other	1	400000
JOHNSON CTLS INC	COM	478366107	868,275	7500	Sh		Shared - Other	1	7500
JONES SODA CO	COM	48023P106	1,402,000	100000	Sh		Shared - Other	1	100000
JOS A BANK CLOTHIERS INC	COM	48083B101	1,649,137	39767	Sh		Shared - Other	1	39767
JP MORGAN CHASE & CO	COM	46625H100	14,830,400	306097	Sh		Shared - Other	1	306097
JP MORGAN CHASE & CO	COM	46625H950	2,422,500	50000		PUT	Shared - Other	1	50000
JP MORGAN CHASE & CO	COM	46625H900	2,907,000	60000		CALL	Shared - Other	1	60000
JUNIPER NETWORKS INC	COM	48203R104	1,766,934	70200	Sh		Shared - Other	1	70200
JUNIPER NETWORKS INC	COM	48203R904	2,517,000	100000		CALL	Shared - Other	1	100000
KBR INC	COM	48242W106	2,229,550	85000	Sh		Shared - Other	1	85000
KELLOGG CO	COM	48783G108	2,848,450	55000	Sh		Shared - Other	1	55000
KEMET CORP	COM	488360108	7,331,295	1039900	Sh		Shared - Other	1	1039900
KEYCORP NEW	COM	493267108	876,548	25533	Sh		Shared - Other	1	25533
KFORCE INC	COM	493732101	1,606,006	100501	Sh		Shared - Other	1	100501
KIMBERLY CLARK CORP	COM	494368103	517,060	7730	Sh		Shared - Other	1	7730
KING PHARMACEUTICALS INC	COM	495582108	242,042	11830	Sh		Shared - Other	1	11830

KIRBY CORP	COM	497266106	1,621,978	42250	Sh		Shared - Other	1	42250
KLA-TENCOR CORP	COM	482480950	19,232,500	350000		PUT	Shared - Other	1	350000
KNIGHT TRANSEN INC	COM	499064103	1,550,400	80000	Sh		Shared - Other	1	80000
KODIAK OIL & GAS CORP	COM	50015Q100	4,157,359	716786	Sh		Shared - Other	1	716786
KOHL'S CORP	COM	500255104	16,336,900	230000	Sh		Shared - Other	1	230000
KOMAG INC	COM	500453904	1,594,500	50000		CALL	Shared - Other	1	50000
KOMAG INC	COM	500453204	5,583,461	175085	Sh		Shared - Other	1	175085
KONINKLIJKE PHILIPS ELECTRS	COM	500472303	11,214,800	265000	Sh		Shared - Other	1	265000
KOPIN CORP	COM	500600101	1,445,367	370607	Sh		Shared - Other	1	370607
KRAFT FOODS INC	COM	50075N904	4,230,000	120000		CALL	Shared - Other	1	120000
KRAFT FOODS INC	COM	50075N104	40,254,478	1141971	Sh		Shared - Other	1	1141971
KRISPY KREME DOUGHNUTS INC	COM	501014104	4,630,000	500000	Sh		Shared - Other	1	500000
KROGER CO	COM	501044101	2,200,610	78230	Sh		Shared - Other	1	78230
K-SWISS INC	COM	482686102	1,699,800	60000	Sh		Shared - Other	1	60000
LAM RESEARCH CORP	COM	512807108	205,137	3991	Sh		Shared - Other	1	3991
LAMAR ADVERTISING CO	COM	512815101	2,008,320	32000	Sh		Shared - Other	1	32000
LANCE INC	COM	514606102	471,200	20000	Sh		Shared - Other	1	20000
LANDAMERICA FINL GROUP INC	COM	514936103	8,684,100	90000	Sh		Shared - Other	1	90000
LANDRYS RESTAURANTS INC	COM	515081953	1,815,600	60000		PUT	Shared - Other	1	60000
LAS VEGAS SANDS CORP	COM	517834107	656,954	8600	Sh		Shared - Other	1	8600
LATTICE SEMICONDUCTOR CORP	COM	518415104	3,546,972	620100	Sh		Shared - Other	1	620100
LAUDER ESTEE COS INC	COM	518439104	576,293	12663	Sh		Shared - Other	1	12663
LAWSON SOFTWARE INC NEW	COM	52078P102	5,309,349	536840	Sh		Shared - Other	1	536840
LAZARD LTD	COM	G54050102	3,230,452	71740	Sh		Shared - Other	1	71740
LDK SOLAR CO LTD	COM	50183L107	10,484,718	334975	Sh		Shared - Other	1	334975
LEADIS TECHNOLOGY INC	COM	52171N103	4,134,861	1178023	Sh		Shared - Other	1	1178023
LEAP WIRELESS INTL INC	COM	521863958	8,450,000	100000		PUT	Shared - Other	1	100000
LEGG MASON INC	COM	524901105	3,935,200	40000	Sh		Shared - Other	1	40000
LEHMAN BROS HLDGS INC	COM	524908900	758,000	10000		CALL	Shared - Other	1	10000
LEHMAN BROS HLDGS INC	COM	524908100	12,149,520	166400	Sh		Shared - Other	1	166400
LEVEL 3 COMMUNICATIONS INC	COM	52729N100	5,308,395	907418	Sh		Shared - Other	1	907418
LEXMARK INTL NEW	COM	529771107	6,425,093	130300	Sh		Shared - Other	1	130300
LG PHILIP LCD CO LTD	COM	50186V952	6,110,100	270000		PUT	Shared - Other	1	270000
LHC GROUP INC	COM	50187A107	1,713,480	65400	Sh		Shared - Other	1	65400
LIBERTY MEDIA HLDG CORP	COM	53071M104	1,104,152	49447	Sh		Shared - Other	1	49447
LIFECELL CORP	COM	531927901	1,374,300	45000		CALL	Shared - Other	1	45000
LIFECELL CORP	COM	531927101	13,132,200	430000	Sh		Shared - Other	1	430000
LIFEPOINT HOSPITALS INC	COM	53219L109	780,098	20168	Sh		Shared - Other	1	20168
LIFEWAY FOODS INC	COM	531914109	338,700	30000	Sh		Shared - Other	1	30000
LILLY ELI & CO	COM	532457108	749,127	13406	Sh		Shared - Other	1	13406
LIMELIGHT NETWORKS INC	COM	53261M104	8,361,065	422703	Sh		Shared - Other	1	422703
LIMITED BRANDS INC	COM	532716907	1,372,500	50000		CALL	Shared - Other	1	50000
LINEAR TECHNOLOGY CORP	COM	535678956	16,100,100	445000		PUT	Shared - Other	1	445000
LINEAR TECHNOLOGY CORP	COM	535678106	904,500	25000	Sh		Shared - Other	1	25000
LIVE NATION INC	COM	538034109	503,550	22500	Sh		Shared - Other	1	22500
LOEWS CORP	COM	540424207	2,716,504	35156	Sh		Shared - Other	1	35156
LOEWS CORP	COM	540424108	4,078,400	80000	Sh		Shared - Other	1	80000
LOEWS CORP	COM	540424958	4,636,200	60000		PUT	Shared - Other	1	60000
LOGITECH INTL S A	COM	H50430952	1,870,400	70000		PUT	Shared - Other	1	70000
LOWES COS INC	COM	548661107	4,296,600	140000	Sh		Shared - Other	1	140000
LSI CORPORATION	COM	502161102	13,955,382	1858240	Sh		Shared - Other	1	1858240
LTX CORP	COM	502392103	800,379	143953	Sh		Shared - Other	1	143953
LUFKIN INDS INC	COM	549764108	5,247,915	81300	Sh		Shared - Other	1	81300
LYONDELL CHEMICAL CO	COM	552078107	2,227,200	60000	Sh		Shared - Other	1	60000
LYONDELL CHEMICAL CO	COM	552078907	5,939,200	160000		CALL	Shared - Other	1	160000
MACYS INC	COM	55616P904	11,934,000	300000		CALL	Shared - Other	1	300000
MACYS INC	COM	55616P104	996,489	25050	Sh		Shared - Other	1	25050
MAGAL SECURITY SYS LTD	COM	M6786D104	3,587,894	354535	Sh		Shared - Other	1	354535
MAGNA ENTMT CORP	COM	559211107	98,404	33700	Sh		Shared - Other	1	33700
MANHATTAN ASSOC INC	COM	562750959	778,689	27900		PUT	Shared - Other	1	27900
MANITOWOC INC	COM	563571108	4,822,800	60000	Sh		Shared - Other	1	60000
MANNKIND CORP	COM	56400P201	897,624	72800	Sh		Shared - Other	1	72800
MANPOWER INC	COM	56418H100	200,161	2170	Sh		Shared - Other	1	2170
MANPOWER INC	COM	56418H950	3,689,600	40000		PUT	Shared - Other	1	40000
MARATHON OIL CORP	COM	565849106	2,515,202	41948	Sh		Shared - Other	1	41948
MARKET VECTORS ETF TR	COM	57060U100	1,134,900	30000	Sh		Shared - Other	1	30000
MARSH & MCLENNAN COS INC	COM	571748102	11,737,488	380100	Sh		Shared - Other	1	380100
MARTHA STEWART LIVING OMNIME	COM	573083102	861,720	50100	Sh		Shared - Other	1	50100
MARVELL TECHNOLOGY GROUP LTD	COM	G5876H905	39,606,750	2175000		CALL	Shared - Other	1	2175000
MARVELL TECHNOLOGY GROUP LTD	COM	G5876H105	50,774,506	2788276	Sh		Shared - Other	1	2788276
MASSEY ENERGY CORP	COM	576206906	2,665,000	100000		CALL	Shared - Other	1	100000
MASTEC INC	COM	576323109	3,164,000	200000	Sh		Shared - Other	1	200000
MAXIM INTEGRATED PRODS INC	COM	57772K101	79,791,433	2388250	Sh		Shared - Other	1	2388250
MAXIM INTEGRATED PRODS INC	COM	57772K901	29,066,700	870000		CALL	Shared - Other	1	870000
MCAFFEE INC	COM	579064956	10,560,000	300000		PUT	Shared - Other	1	300000
MCCLATCHY CO	COM	579489105	2,565,599	101367	Sh		Shared - Other	1	101367
MCDERMOTT INTL INC	COM	580037109	6,148,636	73973	Sh		Shared - Other	1	73973
MCDONALDS CORP	COM	580135101	9,114,466	179560	Sh		Shared - Other	1	179560
MCGRAW HILL COS INC	COM	580645959	13,616,000	200000		PUT	Shared - Other	1	200000
MDS INC	COM	55269P302	4,068,000	200000	Sh		Shared - Other	1	200000
MEASUREMENT SPECIALTIES INC	COM	583421102	220,224	9300	Sh		Shared - Other	1	9300
MEDAREX INC	COM	583916901	7,146,429	500100		CALL	Shared - Other	1	500100
MEDCO HEALTH SOLUTIONS INC	COM	58405U952	3,899,500	50000		PUT	Shared - Other	1	50000
MEDICINES CO	COM	584688905	1,762,000	100000		CALL	Shared - Other	1	100000
MEDICINES CO	COM	584688105	694,228	39400	Sh		Shared - Other	1	39400
MEDIS TECHNOLOGIES LTD	COM	58500P107	501,708	34153	Sh		Shared - Other	1	34153
MEDIS TECHNOLOGIES LTD	COM	58500P907	3,296,436	224400		CALL	Shared - Other	1	224400
MEDIVATION INC	COM	58501N101	2,043,000	100000	Sh		Shared - Other	1	100000
MEDIVATION INC	COM	58501N901	1,430,100	70000		CALL	Shared - Other	1	70000
MELLANOX TECHNOLOGIES LTD	COM	M51363113	1,094,472	52822	Sh		Shared - Other	1	52822
MELLON FINL CORP	COM	58551A108	9,240,000	210000	Sh		Shared - Other	1	210000
MEMC ELECTR MATLS INC	COM	552715104	48,437,600	792500	Sh		Shared - Other	1	792500
MENS WEARHOUSE INC	COM	587118100	766,050	15000	Sh		Shared - Other	1	15000
MERCK & CO INC	COM	589331107	23,708,286	476070	Sh		Shared - Other	1	476070

MERCK & CO INC	COM	589331907	16,438,980	330100		CALL	Shared - Other	1	330100
MERIX CORP	COM	590049102	197,250	25000	Sh		Shared - Other	1	25000
MERRILL LYNCH & CO INC	COM	590188958	5,850,600	70000		PUT	Shared - Other	1	70000
MERRILL LYNCH & CO INC	COM	590188108	17,500	17500	Sh		Shared - Other	1	17500
METABOLIX INC	COM	591018809	11,834,184	472800	Sh		Shared - Other	1	472800
METALLINE MINING INC	COM	591257100	1,328,261	348625	Sh		Shared - Other	1	348625
METROPCS COMMUNICATIONS INC	COM	591708102	3,066,112	92800	Sh		Shared - Other	1	92800
MGI PHARMA INC	COM	552880106	1,118,500	50000	Sh		Shared - Other	1	50000
MGIC INVT CORP WIS	COM	552848103	25,000	25000	Sh		Shared - Other	1	25000
MICREL INC	COM	594793101	10,691,478	840525	Sh		Shared - Other	1	840525
MICROS SYS INC	COM	594901100	1,632,000	30000	Sh		Shared - Other	1	30000
MICROSEMI CORP	COM	595137100	4,912,001	205094	Sh		Shared - Other	1	205094
MICROSOFT CORP	COM	594918904	2,947,000	100000		CALL	Shared - Other	1	100000
MICROSOFT CORP	COM	594918104	123,474,703	4189844	Sh		Shared - Other	1	4189844
MICROTUNE INC DEL	COM	59514F109	575,300	110000	Sh		Shared - Other	1	110000
MIDCAP SPDR TR	COM	595635953	181,689,250	1115000		PUT	Shared - Other	1	1115000
MILLENNIUM PHARMACEUTICALS I	COM	599902953	528,500	50000		PUT	Shared - Other	1	50000
MILLER HERMAN INC	COM	600544100	966,296	30579	Sh		Shared - Other	1	30579
MINRAD INTL INC	COM	60443P103	1,482,500	250000	Sh		Shared - Other	1	250000
MIRANT CORP NEW	COM	60467R900	3,412,000	80000		CALL	Shared - Other	1	80000
MIRANT CORP NEW	COM	60467R100	27,039,460	633985	Sh		Shared - Other	1	633985
MOHAWK INDS INC	COM	608190954	5,039,500	50000		PUT	Shared - Other	1	50000
MOLSON COORS BREWING CO	COM	60871R209	277,380	3000	CL B		Shared - Other	1	3000
MOMENTA PHARMACEUTICALS INC	COM	60877T950	8,839,152	876900		PUT	Shared - Other	1	876900
MONOLITHIC PWR SYS INC	COM	609839105	2,966,500	170000	Sh		Shared - Other	1	170000
MONSANTO CO NEW	COM	61166W101	5,403,200	80000	Sh		Shared - Other	1	80000
MONSANTO CO NEW	COM	61166W901	10,131,000	150000		CALL	Shared - Other	1	150000
MONSTER WORLDWIDE INC	COM	611742107	13,357,500	325000	Sh		Shared - Other	1	325000
MONSTER WORLDWIDE INC	COM	611742907	8,220,000	200000		CALL	Shared - Other	1	200000
MORGAN STANLEY	COM	617446908	5,032,800	60000		CALL	Shared - Other	1	60000
MORGAN STANLEY	COM	617446448	25,164,000	300000	Sh		Shared - Other	1	300000
MOTOROLA INC	COM	620076109	10,181,907	575249	Sh		Shared - Other	1	575249
MOTOROLA INC	COM	620076909	11,505,000	650000		CALL	Shared - Other	1	650000
MSC SOFTWARE CORP	COM	553531104	167,607	12397	Sh		Shared - Other	1	12397
MTC TECHNOLOGIES INC	COM	55377A106	1,751,226	71304	Sh		Shared - Other	1	71304
MUELLER WTR PRODS INC	COM	624758108	3,326,700	195000	Sh		Shared - Other	1	195000
MULTI FINELINE ELECTRONIX IN	COM	62541B901	4,290,000	250000		CALL	Shared - Other	1	250000
MULTI FINELINE ELECTRONIX IN	COM	62541B101	11,770,164	685907	Sh		Shared - Other	1	685907
MURPHY OIL CORP	COM	626717102	594,400	10000	Sh		Shared - Other	1	10000
MYLAN LABS INC	COM	628530907	8,029,066	441400		CALL	Shared - Other	1	441400
NABORS INDUSTRIES LTD	COM	G6359F103	230,622	6909	Sh		Shared - Other	1	6909
NABORS INDUSTRIES LTD	COM	G6359F903	3,338,000	100000		CALL	Shared - Other	1	100000
NALCO HOLDING COMPANY	COM	62985Q101	749,385	27300	Sh		Shared - Other	1	27300
NAM TAI ELECTRS INC	COM	629865205	135,888	11400	Sh		Shared - Other	1	11400
NAPCO SEC SYS INC	COM	630402105	5,681,970	901900	Sh		Shared - Other	1	901900
NAPSTER INC	COM	630797108	510,000	150000	Sh		Shared - Other	1	150000
NASDAQ STOCK MARKET INC	COM	631103108	1,934,121	65100	Sh		Shared - Other	1	65100
NATIONAL CITY CORP	COM	635405953	3,332,000	100000		PUT	Shared - Other	1	100000
NATIONAL SEMICONDUCTOR CORP	COM	637640103	5,580,979	197417	Sh		Shared - Other	1	197417
NATIONSHALTHEALTH INC	COM	63860C100	1,933,333	1255411	Sh		Shared - Other	1	1255411
NBTY INC	COM	628782104	7,128,000	165000	Sh		Shared - Other	1	165000
NBTY INC	COM	628782904	2,160,000	50000		CALL	Shared - Other	1	50000
NCR CORP NEW	COM	62886E108	8,390,638	159700	Sh		Shared - Other	1	159700
NCR CORP NEW	COM	62886E908	4,203,200	80000		CALL	Shared - Other	1	80000
NESS TECHNOLOGIES INC	COM	64104X108	36,106,146	2775261	Sh		Shared - Other	1	2775261
NET 1 UEPS TECHNOLOGIES INC	COM	64107N206	17,404,905	720700	Sh		Shared - Other	1	720700
NETFLIX INC	COM	64110L906	1,939,000	100000		CALL	Shared - Other	1	100000
NETLOGIC MICROSYSTEMS INC	COM	64118B950	955,200	30000		PUT	Shared - Other	1	30000
NETWORK APPLIANCE INC	COM	64120L104	7,601,835	260426	Sh		Shared - Other	1	260426
NETWORK APPLIANCE INC	COM	64120L904	2,190,000	75000		CALL	Shared - Other	1	75000
NEURO HITTECH INC	COM	641244108	1,165,500	185000	Sh		Shared - Other	1	185000
NEUSTAR INC	COM	64126X201	1,164,594	40200	Sh		Shared - Other	1	40200
NEVSUN RES LTD	COM	64156L101	750,000	300000	Sh		Shared - Other	1	300000
NEW YORK & CO INC	COM	649295102	2,411,200	220000	Sh		Shared - Other	1	220000
NEW YORK TIMES CO	COM	650111107	5,041,900	198500	Sh		Shared - Other	1	198500
NEWALLIANCE BANCSHARES INC	COM	650203102	1,214,400	82500	Sh		Shared - Other	1	82500
NEWELL RUBBERMAID INC	COM	651229106	3,828,931	130103	Sh		Shared - Other	1	130103
NEWFIELD EXPL CO	COM	651290108	1,366,500	30000	Sh		Shared - Other	1	30000
NEWPORT CORP	COM	651824104	774,000	50000	Sh		Shared - Other	1	50000
NEWSTAR FINANCIAL INC	COM	65251F105	4,098,240	288000	Sh		Shared - Other	1	288000
NEWTEK BUSINESS SVCS INC	COM	652526104	349,731	184069	Sh		Shared - Other	1	184069
NEXEN INC	COM	65334H102	1,547,500	50000	Sh		Shared - Other	1	50000
NII HLDGS INC	COM	62913F201	19,380,103	240031	Sh		Shared - Other	1	240031
NIKE INC	COM	654106103	536,385	9202	Sh		Shared - Other	1	9202
NOKIA CORP	COM	654902904	19,677,000	700000		CALL	Shared - Other	1	700000
NOKIA CORP	COM	654902204	30,780,450	1095000	Sh		Shared - Other	1	1095000
NORDSTROM INC	COM	655664100	2,177,712	42600	Sh		Shared - Other	1	42600
NORFOLK SOUTHERN CORP	COM	655844108	6,542,337	124450	Sh		Shared - Other	1	124450
NORTHEAST UTILS	COM	664397106	5,672,000	200000	Sh		Shared - Other	1	200000
NOVA BIOSOURCE FUELS INC	COM	65488W103	114,750	45000	Sh		Shared - Other	1	45000
NOVAGOLD RES INC	COM	66987E206	451,065	30011	Sh		Shared - Other	1	30011
NOVARTIS A G	COM	66987V909	5,354,685	95500		CALL	Shared - Other	1	95500
NOVELLUS SYS INC	COM	670008101	3,661,858	129075	Sh		Shared - Other	1	129075
NRG ENERGY INC	COM	629377508	3,366,339	80980	Sh		Shared - Other	1	80980
NSTAR	COM	67019E107	1,934,020	59600	Sh		Shared - Other	1	59600
NTELOS HLDGS CORP	COM	67020Q107	829,200	30000	Sh		Shared - Other	1	30000
NUCOR CORP	COM	670346105	3,988,200	68000	Sh		Shared - Other	1	68000
NUCOR CORP	COM	670346955	2,932,500	50000		PUT	Shared - Other	1	50000
NUVELO INC	COM	67072M301	408,000	150000	Sh		Shared - Other	1	150000
NVIDIA CORP	COM	67066G954	2,065,500	50000		PUT	Shared - Other	1	50000
NVIDIA CORP	COM	67066G104	21,713,032	525612	Sh		Shared - Other	1	525612
NVIDIA CORP	COM	67066G904	2,065,500	50000		CALL	Shared - Other	1	50000
NXSTAGE MEDICAL INC	COM	67072V103	4,210,292	325622	Sh		Shared - Other	1	325622
NYMEX HOLDINGS INC	COM	62948N104	3,140,750	25000	Sh		Shared - Other	1	25000

OCCIDENTAL PETE CORP DEL	COM	674599105	1,591,700	27500	Sh		Shared - Other	1	27500
OCCIDENTAL PETE CORP DEL	COM	674599905	13,891,200	240000		CALL	Shared - Other	1	240000
OCEANFREIGHT INC	COM	Y64202107	1,833,500	95000	Sh		Shared - Other	1	95000
ODYSSEY MARINE EXPLORATION I	COM	676118102	3,849,982	640596	Sh		Shared - Other	1	640596
OFFICE DEPOT INC	COM	676220106	20,890,244	689447	Sh		Shared - Other	1	689447
OGX ENERGY CORP	COM	670837103	11,178,250	305000	Sh		Shared - Other	1	305000
OIL SVC HOLDERS TR	COM	678002956	41,089,750	235000		PUT	Shared - Other	1	235000
OLD DOMINION FIGHT LINES INC	COM	679580100	12,813,750	425000	Sh		Shared - Other	1	425000
OM GROUP INC	COM	670872950	1,587,600	30000		PUT	Shared - Other	1	30000
OMNIVISION TECHNOLOGIES INC	COM	682128103	39,517,197	2182065	Sh		Shared - Other	1	2182065
OMNIVISION TECHNOLOGIES INC	COM	682128903	9,055,000	500000		CALL	Shared - Other	1	500000
ON SEMICONDUCTOR CORP	COM	682189105	33,253,847	3102038	Sh		Shared - Other	1	3102038
ON2 TECHNOLOGIES INC	COM	68338A107	682,926	227642	Sh		Shared - Other	1	227642
ONYX PHARMACEUTICALS INC	COM	683399109	31,583,290	1174100	Sh		Shared - Other	1	1174100
ONYX PHARMACEUTICALS INC	COM	683399909	3,362,500	125000		CALL	Shared - Other	1	125000
OPENTV CORP	COM	G67543101	339,200	160000	Sh		Shared - Other	1	160000
OPLINK COMMUNICATIONS INC	COM	68375Q403	1,200,000	80000	Sh		Shared - Other	1	80000
OPNET TECHNOLOGIES INC	COM	683757108	210,748	18310	Sh		Shared - Other	1	18310
OPNEXT INC	COM	68375V105	529,600	40000	Sh		Shared - Other	1	40000
OPSWARE INC	COM	68383A101	15,370,604	1616257	Sh		Shared - Other	1	1616257
OPSWARE INC	COM	68383A901	5,230,500	550000		CALL	Shared - Other	1	550000
OPTICAL COMMUNICATION PRODS	COM	68382T101	644,000	400000	Sh		Shared - Other	1	400000
OPTIMAL GROUP INC	COM	68388R208	4,089,080	541600	Sh		Shared - Other	1	541600
ORACLE CORP	COM	68389X105	62,726,661	3182479	Sh		Shared - Other	1	3182479
ORACLE CORP	COM	68389X905	40,602,600	2060000		CALL	Shared - Other	1	2060000
ORCKIT COMMUNICATIONS LTD	COM	M7531S206	705,939	78700	Sh		Shared - Other	1	78700
OREXIGEN THERAPEUTICS INC	COM	686164104	1,942,116	129302	Sh		Shared - Other	1	129302
ORIGIN AGRITECH LIMITED	COM	G67828106	4,125,000	500000	Sh		Shared - Other	1	500000
OSHKOSH TRUCK CORP	COM	688239901	1,573,000	25000		CALL	Shared - Other	1	25000
OSI PHARMACEUTICALS INC	COM	671040903	9,052,500	250000		CALL	Shared - Other	1	250000
OSI PHARMACEUTICALS INC	COM	671040953	3,621,000	100000		PUT	Shared - Other	1	100000
OSI SYSTEMS INC	COM	671044105	920,273	33648	Sh		Shared - Other	1	33648
OVERLAND STORAGE INC	COM	690310107	2,040,670	784973	Sh		Shared - Other	1	784973
P F CHANGS CHINA BISTRO INC	COM	69333Y958	1,760,000	50000		PUT	Shared - Other	1	50000
P F CHANGS CHINA BISTRO INC	COM	69333Y908	1,760,000	50000		CALL	Shared - Other	1	50000
PACER INTL INC TENN	COM	69373H906	1,881,600	80000		CALL	Shared - Other	1	80000
PACER INTL INC TENN	COM	69373H106	9,408,000	400000	Sh		Shared - Other	1	400000
PACKETEER INC	COM	695210954	781,000	100000		PUT	Shared - Other	1	100000
PACKETEER INC	COM	695210104	782,312	100168	Sh		Shared - Other	1	100168
PANTRY INC	COM	698657103	7,358,113	159612	Sh		Shared - Other	1	159612
PAR PHARMACEUTICAL COS INC	COM	69888P906	8,158,470	289000		CALL	Shared - Other	1	289000
PARALLEL PETE CORP DEL	COM	699157103	871,620	39800	Sh		Shared - Other	1	39800
PARKER HANNIFIN CORP	COM	701094954	7,343,250	75000		PUT	Shared - Other	1	75000
PATNI COMPUTER SYS	COM	703248203	2,521,000	100000	Sh		Shared - Other	1	100000
PATTERSON UTI ENERGY INC	COM	703481951	1,048,400	40000		PUT	Shared - Other	1	40000
PATTERSON UTI ENERGY INC	COM	703481101	224,882	8580	Sh		Shared - Other	1	8580
PAYCHEX INC	COM	704326107	326,222	8339	Sh		Shared - Other	1	8339
PAYLESS SHOESOURCE INC	COM	704379106	2,524,000	80000	Sh		Shared - Other	1	80000
PC MALL INC	COM	69323K100	1,105,592	90400	Sh		Shared - Other	1	90400
PDL BIOPHARMA INC	COM	69329Y904	13,907,770	596900		CALL	Shared - Other	1	596900
PEABODY ENERGY CORP	COM	704549904	5,805,600	120000		CALL	Shared - Other	1	120000
PEABODY ENERGY CORP	COM	704549954	4,838,000	100000		PUT	Shared - Other	1	100000
PEABODY ENERGY CORP	COM	704549104	34,107,900	705000	Sh		Shared - Other	1	705000
PENNEY J C INC	COM	708160106	641,793	8867	Sh		Shared - Other	1	8867
PENWEST PHARMACEUTICALS CO	COM	709754105	31,760,055	2546917	Sh		Shared - Other	1	2546917
PENWEST PHARMACEUTICALS CO	COM	709754905	33,382,190	2677000		CALL	Shared - Other	1	2677000
PEOPLES UNITED FINANCIAL INC	COM	712704105	2,038,950	115000	Sh		Shared - Other	1	115000
PEOPLES UNITED FINANCIAL INC	COM	712704905	8,510,400	480000		CALL	Shared - Other	1	480000
PEOPLESUPPORT INC	COM	712714302	31,733,998	2795947	Sh		Shared - Other	1	2795947
PEP BOYS MANNY MOE & JACK	COM	713278959	2,016,000	100000		PUT	Shared - Other	1	100000
PEPSI BOTTLING GROUP INC	COM	713409100	673,600	20000	Sh		Shared - Other	1	20000
PEPSICO INC	COM	713448108	9,313,757	143620	Sh		Shared - Other	1	143620
PEROT SYS CORP	COM	714265105	1,704,000	100000	Sh		Shared - Other	1	100000
PERRIGO CO	COM	714290103	3,916,000	200000	Sh		Shared - Other	1	200000
PETMED EXPRESS INC	COM	716382106	256,800	20000	Sh		Shared - Other	1	20000
PETRO-CDA	COM	71644E952	7,974,000	150000		PUT	Shared - Other	1	150000
PETSMART INC	COM	716768956	8,112,500	250000		PUT	Shared - Other	1	250000
PFIZER INC	COM	717081103	454,635	17780	Sh		Shared - Other	1	17780
PGT INC	COM	69336V101	546,500	50000	Sh		Shared - Other	1	50000
PHARMACEUTICAL HLDRS TR	COM	71712A906	24,498,000	300000		CALL	Shared - Other	1	300000
PHARMACEUTICAL PROD DEV INC	COM	717124951	3,827,000	100000		PUT	Shared - Other	1	100000
PHARMASSET INC	COM	71715N106	4,378,740	501000	Sh		Shared - Other	1	501000
PHARMION CORP	COM	71715B409	12,318,225	425500	Sh		Shared - Other	1	425500
PHARMION CORP	COM	71715B909	3,763,500	130000		CALL	Shared - Other	1	130000
PHOTON DYNAMICS INC	COM	719364101	820,770	75300	Sh		Shared - Other	1	75300
PHOTON DYNAMICS INC	COM	719364901	3,815,000	350000		CALL	Shared - Other	1	350000
PHYSICIANS FORMULA HLDGS INC	COM	719427106	314,500	20000	Sh		Shared - Other	1	20000
PIER 1 IMPORTS INC	COM	720279108	5,662,754	666991	Sh		Shared - Other	1	666991
PILGRIMS PRIDE CORP	COM	721467108	5,343,800	140000	Sh		Shared - Other	1	140000
PIONEER NAT RES CO	COM	723787107	240,627	4940	Sh		Shared - Other	1	4940
PIXELWORKS INC	COM	72581M107	478,339	325400	Sh		Shared - Other	1	325400
PLANAR SYS INC	COM	726900103	1,795,466	239380	Sh		Shared - Other	1	239380
PLAYBOY ENTERPRISES INC	COM	728117300	3,399,000	300000	Sh		Shared - Other	1	300000
PLAYTEX PRODS INC	COM	72813P100	592,400	40000	Sh		Shared - Other	1	40000
PLX TECHNOLOGY INC	COM	693417107	3,012,754	269960	Sh		Shared - Other	1	269960
PMC-SIERRA INC	COM	69344F106	22,432,058	2901948	Sh		Shared - Other	1	2901948
PMI GROUP INC	COM	69344M101	2,862,454	64080	Sh		Shared - Other	1	64080
PNC FINL SVCS GROUP INC	COM	693475105	3,223,820	45038	Sh		Shared - Other	1	45038
POLO RALPH LAUREN CORP	COM	731572953	6,377,150	65000		PUT	Shared - Other	1	65000
PONIARD PHARMACEUTICALS INC	COM	732449301	680,000	100000	Sh		Shared - Other	1	100000
PORTFOLIO RECOVERY ASSOCS IN	COM	73640Q955	600,200	10000		PUT	Shared - Other	1	10000
POWERSHARES ETF TRUST	COM	73935X500	1,459,649	70108	Sh		Shared - Other	1	70108
POWERSHARES QQQ TRUST	COM	73935A104	3,568,800	75000	Sh		Shared - Other	1	75000
POWERSHARES QQQ TRUST	COM	73935A954	478,380,000	10050000		PUT	Shared - Other	1	10050000

POWERWAVE TECHNOLOGIES INC	COM	739363109	24,464,742	3651454	Sh	Shared - Other	1	3651454
POWERWAVE TECHNOLOGIES INC	COM	739363909	5,360,000	800000	CALL	Shared - Other	1	800000
PPG INDS INC	COM	693506957	3,044,400	40000	PUT	Shared - Other	1	40000
PPG INDS INC	COM	693506107	1,476,534	19400	Sh	Shared - Other	1	19400
PPL CORP	COM	693511106	6,952,994	148600	Sh	Shared - Other	1	148600
PRIDE INTL INC DEL	COM	74153Q102	10,168,704	271455	Sh	Shared - Other	1	271455
PRIDE INTL INC DEL	COM	74153Q902	749,200	20000	CALL	Shared - Other	1	20000
PRIDE INTL INC DEL	COM	74153Q952	1,873,000	50000	PUT	Shared - Other	1	50000
PROCTER & GAMBLE CO	COM	742718109	11,176,782	182657	Sh	Shared - Other	1	182657
PROGENICS PHARMACEUTICALS IN	COM	743187906	3,235,500	150000	CALL	Shared - Other	1	150000
PROGENICS PHARMACEUTICALS IN	COM	743187106	6,471,000	300000	Sh	Shared - Other	1	300000
PROGRESS ENERGY INC	COM	743263105	420,340	9220	Sh	Shared - Other	1	9220
PROGRESSIVE GAMING INTL CORP	COM	743328102	4,945,792	842554	Sh	Shared - Other	1	842554
PROLOGIS	COM	743410102	569,000	10000	Sh	Shared - Other	1	10000
PROVIDENT BANKSHARES CORP	COM	743859100	396,638	12100	Sh	Shared - Other	1	12100
PRUDENTIAL FINL INC	COM	744320102	2,916,900	30000	Sh	Shared - Other	1	30000
PULTE HOMES INC	COM	745867101	5,693,545	253610	Sh	Shared - Other	1	253610
QAD INC	COM	74727D108	376,579	45371	Sh	Shared - Other	1	45371
QIMONDA AG	COM	746904101	3,476,945	225045	Sh	Shared - Other	1	225045
QLOGIC CORP	COM	747277101	13,110,843	787438	Sh	Shared - Other	1	787438
QLOGIC CORP	COM	747277901	3,330,000	200000	CALL	Shared - Other	1	200000
QLT INC	COM	746927102	28,173,376	3807213	Sh	Shared - Other	1	3807213
QLT INC	COM	746927902	4,318,640	593600	CALL	Shared - Other	1	593600 x
QUALCOMM INC	COM	747525903	5,423,750	125000	CALL	Shared - Other	1	125000
QUALCOMM INC	COM	747525103	22,788,428	525200	Sh	Shared - Other	1	525200
QUALCOMM INC	COM	747525953	3,254,250	75000	PUT	Shared - Other	1	75000
QUANTA SVCS INC	COM	74762E902	3,067,000	100000	CALL	Shared - Other	1	100000
QUANTA SVCS INC	COM	74762E102	1,993,550	65000	Sh	Shared - Other	1	65000
QUANTUM CORP	COM	747906204	276,741	87300	Sh	Shared - Other	1	87300
QUEST SOFTWARE INC	COM	74834T103	24,448,179	1510079	Sh	Shared - Other	1	1510079
QUESTAR CORP	COM	748356902	3,699,500	70000	CALL	Shared - Other	1	70000
QUESTAR CORP	COM	748356952	3,963,750	75000	PUT	Shared - Other	1	75000
QUESTAR CORP	COM	748356102	3,107,580	58900	Sh	Shared - Other	1	58900
QUIKSILVER INC	COM	74838C906	2,543,400	180000	CALL	Shared - Other	1	180000
QUIKSILVER INC	COM	74838C106	7,912,800	560000	Sh	Shared - Other	1	560000
RACKABLE SYS INC	COM	750077109	21,135,303	1709976	Sh	Shared - Other	1	1709976
RACKABLE SYS INC	COM	750077909	2,051,760	166000	CALL	Shared - Other	1	166000
RADIO ONE INC	COM	75040F405	11,296,000	1600000	Sh	Shared - Other	1	1600000
RADIOSHACK CORP	COM	750438953	8,285,000	250000	PUT	Shared - Other	1	250000
RADISYS CORP	COM	750459109	1,470,652	118601	Sh	Shared - Other	1	118601
RADNET INC	COM	750491102	1,143,600	120000	Sh	Shared - Other	1	120000
RADVISION LTD	COM	M81869105	3,564,396	169491	Sh	Shared - Other	1	169491
RADWARE LTD	COM	M81873107	1,091,250	75000	Sh	Shared - Other	1	75000
RAE SYS INC	COM	75061P102	585,273	253365	Sh	Shared - Other	1	253365
RAIT FINANCIAL TRUST	COM	749227104	2,152,374	82720	Sh	Shared - Other	1	82720
RAMBUS INC DEL	COM	750917906	3,596,000	200000	CALL	Shared - Other	1	200000
RAMBUS INC DEL	COM	750917106	12,184,471	677668	Sh	Shared - Other	1	677668
RANGE RES CORP	COM	75281A109	2,267,794	60620	Sh	Shared - Other	1	60620
RAYTHEON CO	COM	755111507	7,614,657	141300	Sh	Shared - Other	1	141300
REALNETWORKS INC	COM	75605L104	2,045,409	250356	Sh	Shared - Other	1	250356
RED HAT INC	COM	756577902	8,912,000	400000	CALL	Shared - Other	1	400000
RED ROBIN GOURMET BURGERS IN	COM	75689M101	2,422,200	60000	Sh	Shared - Other	1	60000
REDDY ICE HLDGS INC	COM	75734R105	285,200	10000	Sh	Shared - Other	1	10000
RELiance STEEL & ALUMINUM CO	COM	759509102	1,535,898	27300	Sh	Shared - Other	1	27300
RENOVIS INC	COM	759885106	1,695,160	468100	Sh	Shared - Other	1	468100
RENTECH INC	COM	760112102	216,923	83754	Sh	Shared - Other	1	83754
REPSOL YPF S A	COM	76026T955	3,096,000	80000	PUT	Shared - Other	1	80000
REPUBLIC SVCS INC	COM	760759100	1,532,000	50000	Sh	Shared - Other	1	50000
RESEARCH IN MOTION LTD	COM	760975102	17,499,125	87500	Sh	Shared - Other	1	87500
RESEARCH IN MOTION LTD	COM	760975952	15,999,200	80000	PUT	Shared - Other	1	80000
REYNOLDS AMERICAN INC	COM	761713106	577,150	8852	Sh	Shared - Other	1	8852
RF MICRODEVICES INC	COM	749941100	4,372,774	700765	Sh	Shared - Other	1	700765
RF MONOLITHICS INC	COM	74955F106	296,532	57691	Sh	Shared - Other	1	57691
RIGHTNOW TECHNOLOGIES INC	COM	76657R106	3,377,391	205813	Sh	Shared - Other	1	205813
RIO TINTO PLC	COM	767204950	9,183,600	30000	PUT	Shared - Other	1	30000
RITE AID CORP	COM	767754104	1,276,000	200000	Sh	Shared - Other	1	200000
RIVERBED TECHNOLOGY INC	COM	768573107	14,049,700	320623	Sh	Shared - Other	1	320623
RIVERBED TECHNOLOGY INC	COM	768573957	4,382,000	100000	PUT	Shared - Other	1	100000
RIVERBED TECHNOLOGY INC	COM	768573907	4,382,000	100000	CALL	Shared - Other	1	100000
ROGERS COMMUNICATIONS INC	COM	775109200	212,450	5000	Sh	Shared - Other	1	5000
ROHM & HAAS CO	COM	775371107	1,640,400	30000	Sh	Shared - Other	1	30000
ROYAL CARIBBEAN CRUISES LTD	COM	V7780T103	1,869,630	43500	Sh	Shared - Other	1	43500
RSC HOLDINGS INC	COM	74972L102	11,371,000	568550	Sh	Shared - Other	1	568550
RUSS BERRIE & CO	COM	782233100	1,863,000	100000	Sh	Shared - Other	1	100000
RYDER SYS INC	COM	783549108	7,892,460	146700	Sh	Shared - Other	1	146700
RYLAND GROUP INC	COM	783764103	1,516,250	40574	Sh	Shared - Other	1	40574
SAFECO CORP	COM	786429100	2,116,840	34000	Sh	Shared - Other	1	34000
SAFEGUARD SCIENTIFICS INC	COM	786449108	154,831	55100	Sh	Shared - Other	1	55100
SAFeway INC	COM	786514208	2,415,211	70973	Sh	Shared - Other	1	70973
SAIC INC	COM	78390X101	2,168,400	120000	Sh	Shared - Other	1	120000
SALESFORCE COM INC	COM	79466L902	1,285,800	30000	CALL	Shared - Other	1	30000
SALIX PHARMACEUTICALS INC	COM	795435956	1,230,000	100000	PUT	Shared - Other	1	100000
SANDERSON FARMS INC	COM	800013104	1,941,262	43120	Sh	Shared - Other	1	43120
SANDISK CORP	COM	80004C901	8,564,500	175000	CALL	Shared - Other	1	175000
SANDISK CORP	COM	80004C951	2,447,000	50000	PUT	Shared - Other	1	50000
SANDISK CORP	COM	80004C101	28,268,282	577611	Sh	Shared - Other	1	577611
SANOFI AVENTIS	COM	80105N955	2,013,500	50000	PUT	Shared - Other	1	50000
SAP AKTIENGESSELLSCHAFT	COM	803054954	15,321,000	300000	PUT	Shared - Other	1	300000
SAPIENT CORP	COM	803062108	5,256,694	680038	Sh	Shared - Other	1	680038
SARA LEE CORP	COM	803111103	367,123	21099	Sh	Shared - Other	1	21099
SARA LEE CORP	COM	803111903	8,700,000	500000	CALL	Shared - Other	1	500000
SATYAM COMPUTER SERVICES LTD	COM	804098101	4,952,000	200000	Sh	Shared - Other	1	200000
SBA COMMUNICATIONS CORP	COM	78388J106	766,960	22833	Sh	Shared - Other	1	22833
SCHERING PLOUGH CORP	COM	806605101	14,151,556	464900	Sh	Shared - Other	1	464900

SCHLUMBERGER LTD	COM	806857108	1,455,447	17135	Sh	Shared - Other	1	17135	
SCHWAB CHARLES CORP NEW	COM	808513905	6,156,000	300000		CALL	Shared - Other	1	300000
SCHWAB CHARLES CORP NEW	COM	808513105	36,751,751	1791021	Sh	Shared - Other	1	1791021	
SCHWEITZER-MAUDUIT INTL INC	COM	808541106	930,000	30000	Sh	Shared - Other	1	30000	
SCIENTIFIC GAMES CORP	COM	80874P109	3,014,333	86247	Sh	Shared - Other	1	86247	
SEAGATE TECHNOLOGY	COM	G7945J104	15,240,089	700050	Sh	Shared - Other	1	700050	
SEAGATE TECHNOLOGY	COM	G7945J904	7,837,200	360000		CALL	Shared - Other	1	360000
SEALED AIR CORP NEW	COM	81211K900	1,861,200	60000		CALL	Shared - Other	1	60000
SEALED AIR CORP NEW	COM	81211K100	3,102,000	100000	Sh	Shared - Other	1	100000	
SEARS HLDGS CORP	COM	812350906	4,237,500	25000		CALL	Shared - Other	1	25000
SEARS HLDGS CORP	COM	812350106	7,921,922	46737	Sh	Shared - Other	1	46737	
SEARS HLDGS CORP	COM	812350956	4,237,500	25000		PUT	Shared - Other	1	25000
SELECT SECTOR SPDR TR	COM	81369Y950	5,937,000	150000		PUT	Shared - Other	1	150000
SELECT SECTOR SPDR TR	COM	81369Y886	5,937,000	150000	Sh	Shared - Other	1	150000	
SELECT SECTOR SPDR TR	COM	81369Y950	7,062,000	200000		PUT	Shared - Other	1	200000
SELECT SECTOR SPDR TR	COM	81369Y950	10,240,000	400000		PUT	Shared - Other	1	400000
SELECT SECTOR SPDR TR	COM	81369Y950	16,371,450	452500		PUT	Shared - Other	1	452500
SELECT SECTOR SPDR TR	COM	81369Y950	13,798,000	200000		PUT	Shared - Other	1	200000
SELECT SECTOR SPDR TR	COM	81369Y950	3,123,200	80000		PUT	Shared - Other	1	80000
SEMICONDUCTOR HLDRS TR	COM	816636203	1,712,250	45000	Sh	Shared - Other	1	45000	
SEMICONDUCTOR HLDRS TR	COM	816636903	26,635,000	700000		CALL	Shared - Other	1	700000
SEMPRA ENERGY	COM	816851909	8,884,500	150000		CALL	Shared - Other	1	150000
SEMTech CORP	COM	816850101	12,902,740	744532	Sh	Shared - Other	1	744532	
SEPRACOR INC	COM	817315904	13,712,986	334300		CALL	Shared - Other	1	334300
SEPRACOR INC	COM	817315104	4,112,337	100252	Sh	Shared - Other	1	100252	
SHANDA INTERACTIVE ENTMT LTD	COM	81941Q203	7,774,800	250800	Sh	Shared - Other	1	250800	
SHANDA INTERACTIVE ENTMT LTD	COM	81941Q903	3,720,000	120000		CALL	Shared - Other	1	120000
SHERWIN WILLIAMS CO	COM	824348106	275,718	4148	Sh	Shared - Other	1	4148	
SHIRE PLC	COM	82481R906	5,559,750	75000		CALL	Shared - Other	1	75000
SHIRE PLC	COM	82481R106	14,798,720	199632	Sh	Shared - Other	1	199632	
SHUFFLE MASTER INC	COM	825549108	943,876	56860	Sh	Shared - Other	1	56860	
SI INTL INC	COM	78427V102	2,806,700	85000	Sh	Shared - Other	1	85000	
SIERRA WIRELESS INC	COM	826516106	622,250	25000	Sh	Shared - Other	1	25000	
SIERRA WIRELESS INC	COM	826516956	1,244,500	50000		PUT	Shared - Other	1	50000 x
SIGMA DESIGNS INC	COM	826565103	20,914,996	801648	Sh	Shared - Other	1	801648	
SILICON IMAGE INC	COM	82705T102	1,721,749	200670	Sh	Shared - Other	1	200670	
SILICON LABORATORIES INC	COM	826919102	2,570,796	74279	Sh	Shared - Other	1	74279	
SILICONWARE PRECISION INDS L	COM	827084864	15,904,669	1445879	Sh	Shared - Other	1	1445879	
SIMON PTY GROUP INC NEW	COM	828806109	1,036,466	11140	Sh	Shared - Other	1	11140	
SIPEX CORP	COM	829909209	1,333,500	150000	Sh	Shared - Other	1	150000	
SIRENZA MICRODEVICES INC	COM	82966T106	5,359,293	451499	Sh	Shared - Other	1	451499	
SIRF TECHNOLOGY HLDGS INC	COM	82967H951	5,703,500	275000		PUT	Shared - Other	1	275000
SIRVA INC	COM	82967Y104	594,000	300000	Sh	Shared - Other	1	300000	
SIX FLAGS INC	COM	83001P109	3,727,987	612149	Sh	Shared - Other	1	612149	
SKECHERS U S A INC	COM	830566105	5,111,460	175050	Sh	Shared - Other	1	175050	
SKILLED HEALTHCARE GROUP INC	COM	83066R107	2,104,707	135700	Sh	Shared - Other	1	135700	
SKYWORKS SOLUTIONS INC	COM	83088M102	2,305,254	313640	Sh	Shared - Other	1	313640	
SL GREEN RLTY CORP	COM	78440X101	1,346,684	10870	Sh	Shared - Other	1	10870	
SMITH A O	COM	831865209	4,786,800	120000	Sh	Shared - Other	1	120000	
SMITH MICRO SOFTWARE INC	COM	832154908	1,505,000	100000		CALL	Shared - Other	1	100000
SMITH MICRO SOFTWARE INC	COM	832154108	1,420,630	94332	Sh	Shared - Other	1	94332	
SOHU COM INC	COM	83408W103	3,998,750	125000	Sh	Shared - Other	1	125000	
SOHU COM INC	COM	83408W903	4,158,700	130000		CALL	Shared - Other	1	130000
SOMAXON PHARMACEUTICALS INC	COM	834453102	4,744,139	390143	Sh	Shared - Other	1	390143	
SONICWALL INC	COM	835470105	2,852,816	332109	Sh	Shared - Other	1	332109	
SONOCO PRODS CO	COM	835495102	243,161	5680	Sh	Shared - Other	1	5680	
SONUS NETWORKS INC	COM	835916107	7,369,800	865000	Sh	Shared - Other	1	865000	
SONUS PHARMACEUTICALS INC	COM	835692104	2,640,000	500000	Sh	Shared - Other	1	500000	
SOTHEBYS	COM	835898107	1,780,974	38700	Sh	Shared - Other	1	38700	
SOUTH JERSEY INDS INC	COM	838518108	4,142,998	117100	Sh	Shared - Other	1	117100	
SOUTHERN COPPER CORP	COM	84265V105	893,679	9481	Sh	Shared - Other	1	9481	
SOUTHERN COPPER CORP	COM	84265V955	1,885,200	20000		PUT	Shared - Other	1	20000
SOUTHERN UN CO NEW	COM	844030106	1,632,759	50100	Sh	Shared - Other	1	50100	
SOUTHERN UN CO NEW	COM	844030906	1,629,500	50000		CALL	Shared - Other	1	50000
SOUTHWEST AIRLCS CO	COM	844741108	1,341,900	90000	Sh	Shared - Other	1	90000	
SPDR TR	COM	78462F953	747,411,455	4968500		PUT	Shared - Other	1	4968500
SPDR TR	COM	78462F903	4,512,900	30000		CALL	Shared - Other	1	30000
SPDR TR	COM	78462F103	3,334,732	22168	Sh	Shared - Other	1	22168	
SPECTRA ENERGY CORP	COM	847560109	2,606,384	100400	Sh	Shared - Other	1	100400	
SPECTRUM PHARMACEUTICALS INC	COM	84763A108	3,226,500	450000	Sh	Shared - Other	1	450000	
SPIRIT AEROSYSTEMS HLDGS INC	COM	848574109	3,965,500	110000	Sh	Shared - Other	1	110000	
SPRINT NEXTEL CORP	COM	852061100	231,124	11160	Sh	Shared - Other	1	11160	
SRA INTL INC	COM	78464R105	10,589,068	419203	Sh	Shared - Other	1	419203	
SRS LABS INC	COM	78464M106	198,130	20321	Sh	Shared - Other	1	20321	
ST JOE CO	COM	790148900	926,800	20000		CALL	Shared - Other	1	20000
ST JUDE MED INC	COM	790849103	321,548	7750	Sh	Shared - Other	1	7750	
ST MARY LD & EXPL CO	COM	792228108	4,577,500	125000	Sh	Shared - Other	1	125000	
STANDARD PAC CORP NEW	COM	85375C101	7,039,505	401569	Sh	Shared - Other	1	401569	
STANDARD PAC CORP NEW	COM	85375C901	2,629,500	150000		CALL	Shared - Other	1	150000
STAPLES INC	COM	855030102	4,079,590	171917	Sh	Shared - Other	1	171917	
STARBUCKS CORP	COM	855244909	3,936,000	150000		CALL	Shared - Other	1	150000
STARBUCKS CORP	COM	855244109	20,616,768	785700	Sh	Shared - Other	1	785700	
STARENT NETWORKS CORP	COM	85528P108	8,905,730	605832	Sh	Shared - Other	1	605832	
STARWOOD HOTELS&RESORTS WRLD	COM	85590A901	4,024,200	60000		CALL	Shared - Other	1	60000
STATE STR CORP	COM	857477103	12,934,440	189100	Sh	Shared - Other	1	189100	
STEEL DYNAMICS INC	COM	858119100	2,262,889	53994	Sh	Shared - Other	1	53994	
STEIN MART INC	COM	858375108	2,635,900	215000	Sh	Shared - Other	1	215000	
STEINWAY MUSICAL INSTRS INC	COM	858495104	1,383,600	40000	Sh	Shared - Other	1	40000	
STERIS CORP	COM	859152900	10,348,920	338200		CALL	Shared - Other	1	338200
STEWART ENTERPRISES INC	COM	860370105	1,090,600	140000	Sh	Shared - Other	1	140000	
STILLWATER MNG CO	COM	86074Q102	5,217,089	473850	Sh	Shared - Other	1	473850	
STREETTRACKS GOLD TR	COM	863307104	964,179	15002	Sh	Shared - Other	1	15002	
STREETTRACKS SER TR	COM	86330E959	3,023,000	100000		PUT	Shared - Other	1	100000
STREETTRACKS SER TR	COM	86330E909	9,069,000	300000		CALL	Shared - Other	1	300000

SULPHCO INC	COM	865378103	182,045	50428	Sh	Shared - Other	1	50428
SUMTOTAL SYS INC	COM	866615107	783,000	100000	Sh	Shared - Other	1	100000
SUN MICROSYSTEMS INC	COM	866810104	13,150,000	2500000	Sh	Shared - Other	1	2500000
SUN MICROSYSTEMS INC	COM	866810904	789,000	150000		CALL	Shared - Other	150000
SUNCOR ENERGY INC	COM	867229906	1,798,400	20000	Sh	CALL	Shared - Other	20000
SUNOCO INC	COM	86764P109	2,261,637	28384	Sh	Shared - Other	1	28384
SUNPOWER CORP	COM	867652109	31,525,000	500000	Sh	Shared - Other	1	500000
SUNRISE SENIOR LIVING INC	COM	86768K956	3,999,000	100000		PUT	Shared - Other	100000
SUNTECH PWR HLDGS CO LTD	COM	86800C904	2,735,250	75000	Sh	CALL	Shared - Other	75000
SUNTECH PWR HLDGS CO LTD	COM	86800C104	380,929	10445	Sh	Shared - Other	1	10445
SUPERIOR ESSEX INC	COM	86815V105	9,231,239	247155	Sh	Shared - Other	1	247155
SUPERIOR OFFSHORE INTL INC	COM	86825Q104	819,000	45000	Sh	Shared - Other	1	45000
SUPERIOR WELLS SVCS INC	COM	86837X105	635,250	25000	Sh	Shared - Other	1	25000
SUPERVALU INC	COM	868536103	2,992,272	64600	Sh	Shared - Other	1	64600
SWITCH & DATA FACILITIES COM	COM	871043105	3,274,774	170650	Sh	Shared - Other	1	170650
SYBASE INC	COM	871130900	2,389,000	100000		CALL	Shared - Other	100000
SYBASE INC	COM	871130100	4,140,137	173300	Sh	Shared - Other	1	173300
SYCAMORE NETWORKS INC	COM	871206108	14,510,102	3609478	Sh	Shared - Other	1	3609478
SYMANTEC CORP	COM	871503108	11,126,039	550794	Sh	Shared - Other	1	550794
SYMANTEC CORP	COM	871503908	11,110,000	550000		CALL	Shared - Other	550000
SYNAPTICS INC	COM	87157D109	19,176,282	535800	Sh	Shared - Other	1	535800
SYNERGY FINANCIAL GROUP INC	COM	87162V102	526,930	39500	Sh	Shared - Other	1	39500
SYNTAX BRILLIAN CORP	COM	87163L103	1,906,825	387574	Sh	Shared - Other	1	387574
T-3 ENERGY SVCS INC	COM	87306E107	809,490	24200	Sh	Shared - Other	1	24200
TAIWAN SEMICONDUCTOR MFG LTD	COM	874039100	14,183,360	1274336	Sh	Shared - Other	1	1274336
TAKE-TWO INTERACTIVE SOFTWARE	COM	874054909	4,992,500	250000		CALL	Shared - Other	250000
TAKE-TWO INTERACTIVE SOFTWARE	COM	874054109	2,795,800	140000	Sh	Shared - Other	1	140000
TALISMAN ENERGY INC	COM	87425E103	7,080,579	366300	Sh	Shared - Other	1	366300
TARGET CORP	COM	87612E956	9,540,000	150000		PUT	Shared - Other	150000
TASER INTL INC	COM	87651B904	698,000	50000		CALL	Shared - Other	50000
TCF FINL CORP	COM	872275952	1,112,000	40000	Sh	PUT	Shared - Other	40000
TCF FINL CORP	COM	872275102	1,390,000	50000	Sh	Shared - Other	1	50000
TD AMERITRADE HLDG CORP	COM	87236Y908	2,000,000	100000		CALL	Shared - Other	100000
TECH DATA CORP	COM	878237106	4,812,115	125120	Sh	Shared - Other	1	125120
TELETECH HOLDINGS INC	COM	879939956	1,194,896	36800		PUT	Shared - Other	36800
TELLABS INC	COM	879664900	10,760,000	1000000		CALL	Shared - Other	1000000
TELLABS INC	COM	879664100	23,958,324	2226610	Sh	Shared - Other	1	2226610
TENARIS S A	COM	88031M109	4,406,400	90000	Sh	Shared - Other	1	90000
TENET HEALTHCARE CORP	COM	88033G100	69,592	10690	Sh	Shared - Other	1	10690
TERADYNE INC	COM	880770102	1,406,646	80014	Sh	Shared - Other	1	80014
TEREX CORP NEW	COM	880779103	896,739	11030	Sh	Shared - Other	1	11030
TESORO CORP	COM	881609951	3,429,000	60000		PUT	Shared - Other	60000
TESSERA TECHNOLOGIES INC	COM	88164L100	27,968,754	689735	Sh	Shared - Other	1	689735
TEVA PHARMACEUTICAL INDS LTD	COM	881624209	10,312,500	250000	Sh	Shared - Other	1	250000
TEVA PHARMACEUTICAL INDS LTD	COM	881624909	28,875,000	700000		CALL	Shared - Other	700000
TEXAS INDS INC	COM	882491103	5,331,880	68000	Sh	Shared - Other	1	68000
TEXAS INSTRS INC	COM	882508104	3,793,744	100817	Sh	Shared - Other	1	100817
TEXAS INSTRS INC	COM	882508904	18,815,000	500000		CALL	Shared - Other	500000
TEXAS ROADHOUSE INC	COM	882681109	640,779	50100	Sh	Shared - Other	1	50100
TEXTRON INC	COM	883203901	5,505,500	50000		CALL	Shared - Other	50000
THERMO FISHER SCIENTIFIC INC	COM	883556902	4,137,600	80000		CALL	Shared - Other	80000
THERMO FISHER SCIENTIFIC INC	COM	883556102	264,289	5110	Sh	Shared - Other	1	5110
THINK PARTNERSHIP INC	COM	88409N101	358,800	120000	Sh	Shared - Other	1	120000
THOMAS & BETTS CORP	COM	884315102	4,963,060	85570	Sh	Shared - Other	1	85570
THOMSON	COM	885118109	952,956	51400	Sh	Shared - Other	1	51400
THORNBERG MTG INC	COM	885218107	789,301	30149	Sh	Shared - Other	1	30149
THQ INC	COM	872443403	3,083,130	101020	Sh	Shared - Other	1	101020
THQ INC	COM	872443953	3,052,000	100000		PUT	Shared - Other	100000
TIBCO SOFTWARE INC	COM	88632Q903	1,810,000	200000		CALL	Shared - Other	200000
TIBCO SOFTWARE INC	COM	88632Q103	2,262,500	250000	Sh	Shared - Other	1	250000
TIM PARTICIPACIOES S A	EQUITY	88706P106	4,929,210	143000	Sh	Shared - Other	1	143000
TIMBERLAND CO	COM	887100105	1,532,812	60850	Sh	Shared - Other	1	60850
TIME WARNER CABLE INC	COM	88732J108	1,958,500	50000	Sh	Shared - Other	1	50000
TIME WARNER INC	COM	887317105	23,144,947	1100045	Sh	Shared - Other	1	1100045
TITAN INTL INC ILL	COM	88830M102	1,264,400	40000	Sh	Shared - Other	1	40000
TITAN PHARMACEUTICALS INC DE	COM	888314101	5,017,854	2312375	Sh	Shared - Other	1	2312375
TITANIUM METALS CORP	COM	888339207	797,500	25000	Sh	Shared - Other	1	25000
TIVO INC	COM	888706108	110,010	19000	Sh	Shared - Other	1	19000
TJX COS INC NEW	COM	872540109	2,830,025	102910	Sh	Shared - Other	1	102910
TOLL BROTHERS INC	COM	889478103	1,576,488	63110	Sh	Shared - Other	1	63110
TRANSALTA CORP	COM	89346D107	2,493,000	100000	Sh	Shared - Other	1	100000
TRANSOCEAN INC	COM	G90078959	6,888,700	65000		PUT	Shared - Other	65000
TRANSWITCH CORP	COM	894065101	546,000	300000	Sh	Shared - Other	1	300000
TREEHOUSE FOODS INC	COM	89469A104	1,200,111	45100	Sh	Shared - Other	1	45100
TRIAD HOSPITALS INC	COM	89579K109	448,358	8340	Sh	Shared - Other	1	8340
TRIBUNE CO NEW	COM	896047957	4,565,820	155300		PUT	Shared - Other	155300
TRIBUNE CO NEW	COM	896047107	4,257,737	144821	Sh	Shared - Other	1	144821
TRIDENT MICROSYSTEMS INC	COM	895919108	17,131,890	933618	Sh	Shared - Other	1	933618
TRIDENT MICROSYSTEMS INC	COM	895919908	7,998,765	435900		CALL	Shared - Other	435900
TRIMAS CORP	COM	896215209	1,751,600	145000	Sh	Shared - Other	1	145000
TRIZETTO GROUP INC	COM	896882107	2,904,000	150000	Sh	Shared - Other	1	150000
TRUMP ENTMT RESORTS INC	COM	89816T103	343,434	27300	Sh	Shared - Other	1	27300
TTM TECHNOLOGIES INC	COM	87305R109	976,118	75086	Sh	Shared - Other	1	75086
TUMBLEWEED COMMUNICATIONS CO	COM	899690101	1,543,940	610253	Sh	Shared - Other	1	610253
TURBOCHEF TECHNOLOGIES INC	COM	900006206	15,810,587	1135818	Sh	Shared - Other	1	1135818
TURBOCHEF TECHNOLOGIES INC	COM	900006906	3,480,000	250000		CALL	Shared - Other	250000
TXU CORP	COM	873168908	2,692,000	40000		CALL	Shared - Other	40000
TXU CORP	COM	873168108	8,601,209	127804	Sh	Shared - Other	1	127804
TYCO INTL LTD NEW	COM	902124106	814,981	24119	Sh	Shared - Other	1	24119
TYCO INTL LTD NEW	COM	902124906	1,013,700	30000		CALL	Shared - Other	30000
TYSON FOODS INC	COM	902494953	1,382,400	60000		PUT	Shared - Other	60000
TYSON FOODS INC	COM	902494103	1,382,400	60000	Sh	Shared - Other	1	60000
U S AIRWAYS GROUP INC	COM	90341W908	2,270,250	75000		CALL	Shared - Other	75000
U S CONCRETE INC	COM	90333L102	4,655,363	535715	Sh	Shared - Other	1	535715

U S ENERGY CORP WYO	COM	911805109	4,146,151	770660	Sh		Shared - Other	1	770660
U S G CORP	COM	903293905	4,904,000	100000		CALL	Shared - Other	1	100000
U S G CORP	COM	903293405	29,240,296	596254	Sh		Shared - Other	1	596254
U S XPRESS ENTERPRISES INC	COM	90338N103	7,432,818	400044	Sh		Shared - Other	1	400044
UAL CORP	COM	902549807	5,073,750	125000	Sh		Shared - Other	1	125000
UAL CORP	COM	902549907	2,638,350	65000		CALL	Shared - Other	1	65000
UIL HLDG CORP	COM	902748102	5,645,271	170552	Sh		Shared - Other	1	170552
ULTRA PETROLEUM CORP	COM	903914959	2,762,000	50000		PUT	Shared - Other	1	50000
ULTRA PETROLEUM CORP	COM	903914109	21,587,792	390800	Sh		Shared - Other	1	390800
ULTRA PETROLEUM CORP	COM	903914909	552,400	10000		CALL	Shared - Other	1	10000
UNIBANCO-UNIAO DE BANCOS BRA	COM	90458E107	3,103,925	27500	Sh		Shared - Other	1	27500
UNION PAC CORP	COM	907818108	245,270	2130	Sh		Shared - Other	1	2130
UNISOURCE ENERGY CORP	COM	909205106	4,848,973	147430	Sh		Shared - Other	1	147430
UNISYS CORP	COM	909214108	7,711,418	843700	Sh		Shared - Other	1	843700
UNITED MICROELECTRONICS CORP	COM	910873207	1,744,200	510000	Sh		Shared - Other	1	510000
UNITED PARCEL SERVICE INC	COM	911312906	4,380,000	60000		CALL	Shared - Other	1	60000
UNITED RETAIL GROUP INC	COM	911380103	290,750	25000	Sh		Shared - Other	1	25000
UNITED STATES NATL GAS FUND	COM	912318102	3,318,750	75000	Sh		Shared - Other	1	75000
UNITED STATES STL CORP NEW	COM	912909958	2,718,750	25000		PUT	Shared - Other	1	25000
UNITED STATES STL CORP NEW	COM	912909108	10,330,960	210621	Sh		Shared - Other	1	210621
UNITED STATES STL CORP NEW	COM	912909108	4,894,838	45010	Sh		Shared - Other	1	45010
UNITED TECHNOLOGIES CORP	COM	913017909	709,300	10000		CALL	Shared - Other	1	10000
UNITED TECHNOLOGIES CORP	COM	913017109	13,065,306	184200	Sh		Shared - Other	1	184200
UNITED THERAPEUTICS CORP DEL	COM	91307C902	23,910,000	375000		CALL	Shared - Other	1	375000
UNITEDHEALTH GROUP INC	COM	91324P952	18,972,940	371000		PUT	Shared - Other	1	371000
UNIVERSAL COMPRESSION HLDGS	COM	913431102	5,978,775	82500	Sh		Shared - Other	1	82500
UNIVERSAL HLTH SVCS INC	COM	913903100	258,300	4200	Sh		Shared - Other	1	4200
US BIOENERGY CORP	COM	90342V109	284,000	25000	Sh		Shared - Other	1	25000
USANA HEALTH SCIENCES INC	COM	90328M107	447,400	10000	Sh		Shared - Other	1	10000
UST INC	COM	902911106	1,208,475	22500	Sh		Shared - Other	1	22500
UTI WORLDWIDE INC	COM	G87210103	1,346,331	50255	Sh		Shared - Other	1	50255
VALERO ENERGY CORP NEW	COM	91913Y100	1,138,183	15410	Sh		Shared - Other	1	15410
VALUEVISION MEDIA INC	COM	92047K107	113,200	10000	Sh		Shared - Other	1	10000
VANDA PHARMACEUTICALS INC	COM	921659908	19,405,028	957800		CALL	Shared - Other	1	957800
VANDA PHARMACEUTICALS INC	COM	921659108	36,319,514	1792671	Sh		Shared - Other	1	1792671
VARIAN SEMICONDUCTOR EQUIPMN	COM	922207955	1,061,590	26500		PUT	Shared - Other	1	26500
VARIAN SEMICONDUCTOR EQUIPMN	COM	922207105	2,406,004	60060	Sh		Shared - Other	1	60060
VCG HLDG CORP	COM	91821K101	492,480	60800	Sh		Shared - Other	1	60800
VERASUN ENERGY CORP	COM	92336G106	868,800	60000	Sh		Shared - Other	1	60000
VERAZ NETWORKS INC	COM	923359103	2,137,093	327775	Sh		Shared - Other	1	327775
VERISIGN INC	COM	92343E902	7,932,500	250000		CALL	Shared - Other	1	250000
VERISIGN INC	COM	92343E102	930,863	29337	Sh		Shared - Other	1	29337
VERTEX PHARMACEUTICALS INC	COM	92532F900	1,713,600	60000		CALL	Shared - Other	1	60000
VERTEX PHARMACEUTICALS INC	COM	92532F100	3,712,800	130000	Sh		Shared - Other	1	130000
VIACOM INC NEW	COM	92553P902	6,244,500	150000		CALL	Shared - Other	1	150000 x
VICOR CORP	COM	925815102	1,375,179	103944	Sh		Shared - Other	1	103944
VIEWPOINT CORP	COM	92672P108	336,784	300700	Sh		Shared - Other	1	300700
VIGNETTE CORP	COM	926734951	766,400	40000		PUT	Shared - Other	1	40000
VION PHARMACEUTICALS INC	COM	927624106	37,098	34350	Sh		Shared - Other	1	34350
VIRGIN MEDIA INC	COM	92769L101	9,748,634	400026	Sh		Shared - Other	1	400026
VIROPHARMA INC	COM	928241958	2,760,000	200000		PUT	Shared - Other	1	200000
VISHAY INTERTECHNOLOGY INC	COM	928298958	791,000	50000		PUT	Shared - Other	1	50000
VISICU INC	COM	92831L204	915,000	100000	Sh		Shared - Other	1	100000
VISICU INC	COM	92831L904	3,660,000	400000		CALL	Shared - Other	1	400000
VISTAPRINT LIMITED	COM	G93762954	2,677,500	70000		PUT	Shared - Other	1	70000
VITAL IMAGES INC	COM	92846N104	8,012,200	295000	Sh		Shared - Other	1	295000
VIVO PARTICIPACOES S A	EQUITY	92855S101	1,363,221	272100	Sh		Shared - Other	1	272100
VOLTEERRA SEMICONDUCTOR CORP	COM	928708106	312,187	21985	Sh		Shared - Other	1	21985
WABASH NATL CORP	COM	929566107	3,218,600	220000	Sh		Shared - Other	1	220000
WACHOVA CORP NEW	COM	929903102	6,967,540	135952	Sh		Shared - Other	1	135952
WADDELL & REED FINL INC	COM	930059100	1,560,600	60000	Sh		Shared - Other	1	60000
WAL MART STORES INC	COM	931142103	31,662,538	658128	Sh		Shared - Other	1	658128
WALGREEN CO	COM	931422909	5,224,800	120000		CALL	Shared - Other	1	120000
WALGREEN CO	COM	931422109	16,380,837	376225	Sh		Shared - Other	1	376225
WALTER INDS INC	COM	93317Q105	2,287,840	79000	Sh		Shared - Other	1	79000
WASHINGTON MUT INC	COM	939322953	9,807,200	230000		PUT	Shared - Other	1	230000
WASTE MGMT INC DEL	COM	94106L109	465,398	11918	Sh		Shared - Other	1	11918
WASTE MGMT INC DEL	COM	94106L909	3,124,000	80000		CALL	Shared - Other	1	80000
WASTE SERVICES INC DEL	COM	941075202	303,750	25000	Sh		Shared - Other	1	25000
WATSCO INC	COM	942622200	272,000	5000	Sh		Shared - Other	1	5000
WATSON PHARMACEUTICALS INC	COM	942683903	5,019,379	154300		CALL	Shared - Other	1	154300
WATSON PHARMACEUTICALS INC	COM	942683103	3,253,000	100000	Sh		Shared - Other	1	100000
WATTS WATER TECHNOLOGIES INC	COM	942749102	764,388	20400	Sh		Shared - Other	1	20400
WEATHERFORD INTERNATIONAL LT	COM	G95089901	3,866,800	70000		CALL	Shared - Other	1	70000
WEATHERFORD INTERNATIONAL LT	COM	G95089101	4,557,300	82500	Sh		Shared - Other	1	82500
WEBSense INC	COM	947684106	1,072,913	50490	Sh		Shared - Other	1	50490
WEBSense INC	COM	947684956	2,125,000	100000		PUT	Shared - Other	1	100000
WEBZEN INC	COM	94846M102	1,553,436	346749	Sh		Shared - Other	1	346749
WELLCARE HEALTH PLANS INC	COM	94946T956	2,715,300	30000		PUT	Shared - Other	1	30000
WELLPOINT INC	COM	94973V957	7,983,000	100000		PUT	Shared - Other	1	100000
WELLS FARGO & CO NEW	COM	949746951	1,758,500	50000		PUT	Shared - Other	1	50000
WENDYS INTL INC	COM	950590109	2,171,925	59100	Sh		Shared - Other	1	59100
WERNER ENTERPRISES INC	COM	950755108	1,025,635	50900	Sh		Shared - Other	1	50900
WESCO INTL INC	COM	95082P105	3,633,045	60100	Sh		Shared - Other	1	60100
WESTERN DIGITAL CORP	COM	958102105	9,055,800	468000	Sh		Shared - Other	1	468000
WESTERN DIGITAL CORP	COM	958102905	2,902,500	150000		CALL	Shared - Other	1	150000
WESTERN UN CO	COM	959802109	6,326,071	303700	Sh		Shared - Other	1	303700
WESTSIDE ENERGY CORP	COM	96149R100	2,206,755	614695	Sh		Shared - Other	1	614695
WESTWOOD ONE INC	COM	961815107	1,438,000	200000	Sh		Shared - Other	1	200000
WET SEAL INC	COM	961840105	601,000	100000	Sh		Shared - Other	1	100000
WHEELING PITTSBURGH CORP	COM	963142302	4,776,473	250997	Sh		Shared - Other	1	250997
WHIRLPOOL CORP	COM	963320106	499,502	4402	Sh		Shared - Other	1	4402
WHITE ELECTR DESIGNS CORP	COM	963801105	1,044,000	180000	Sh		Shared - Other	1	180000
WHITING PETE CORP NEW	COM	966387102	810,400	20000	Sh		Shared - Other	1	20000

WILLIAMS COS INC DEL	COM	969457100	16,856,622	533100	Sh		Shared - Other	1	533100
WILLIAMS COS INC DEL	COM	969457950	3,162,000	100000		PUT	Shared - Other	1	100000
WILLIAMS SONOMA INC	COM	969904101	1,275,516	40390	Sh		Shared - Other	1	40390
WIND RIVER SYSTEMS INC	COM	973149107	16,466,494	1496954	Sh		Shared - Other	1	1496954
WINN DIXIE STORES INC	COM	974280307	559,689	19102	Sh		Shared - Other	1	19102
WORTHINGTON INDS INC	COM	981811102	2,052,420	94800	Sh		Shared - Other	1	94800
WPT ENTERPRISES INC	COM	98211W108	3,756,522	918465	Sh		Shared - Other	1	918465
WYNN RESORTS LTD	COM	983134107	1,792,998	20000	Sh		Shared - Other	1	20000
XENOPORT INC	COM	98411C100	2,221,000	50000	Sh		Shared - Other	1	50000
XENOPORT INC	COM	98411C900	4,442,000	100000		CALL	Shared - Other	1	100000
XL CAP LTD	COM	G98255955	4,214,500	50000		PUT	Shared - Other	1	50000
XM SATELLITE RADIO HLDGS INC	COM	983759101	12,952,885	1100500	Sh		Shared - Other	1	1100500
XM SATELLITE RADIO HLDGS INC	COM	983759951	2,354,000	200000		PUT	Shared - Other	1	200000
XM SATELLITE RADIO HLDGS INC	COM	983759901	2,942,500	250000		CALL	Shared - Other	1	250000
XTO ENERGY INC	COM	98385X106	10,511,069	174893	Sh		Shared - Other	1	174893
YAHOO INC	COM	984332106	64,734,269	2386077	Sh		Shared - Other	1	2386077
YAHOO INC	COM	984332956	2,713,000	100000		PUT	Shared - Other	1	100000
YAHOO INC	COM	984332906	15,328,450	565000		CALL	Shared - Other	1	565000
YINGLI GREEN ENERGY HLDG CO	COM	98584B103	1,539,900	106200	Sh		Shared - Other	1	106200
YM BIOSCIENCES INC	COM	984238105	541,371	299100	Sh		Shared - Other	1	299100
YPF SOCIEDAD ANONIMA	COM	984245100	836,200	18500	Sh		Shared - Other	1	18500
YRC WORLDWIDE INC	COM	984249952	1,840,000	50000		PUT	Shared - Other	1	50000
YUM BRANDS INC	COM	988498101	764,110	23353	Sh		Shared - Other	1	23353
ZALE CORP NEW	COM	988858106	4,776,762	200620	Sh		Shared - Other	1	200620
ZHONG TECHNOLOGIES INC NEW	COM	98950P108	717,500	500000	Sh		Shared - Other	1	500000
ZIMMER HLDGS INC	COM	98956P102	432,939	5100	Sh		Shared - Other	1	5100
ZOLTEK COS INC	COM	98975W104	1,042,403	25100	Sh		Shared - Other	1	25100
ZORAN CORP	COM	98975F101	9,463,429	472227	Sh		Shared - Other	1	472227
ZYMOGENETICS INC	COM	98985T109	4,383,000	300000	Sh		Shared - Other	1	300000
			11,058,166,642						

</TABLE>
</TEXT>
</DOCUMENT>

DX-1829

From: Jessica Kourakos <jkourakos@galleongrp.com>
To: Portfolio <Portfolio@galleongrp.com>
Sent: 5/6/2008 3:56:59 PM [GMT -4]
Subject: Sell short 75,000 AKAM
X-IM: "Portfolio at GalleonAsia" <portfolio@galleonasia.com>; "Seb Calabro" <scalabro@galleongrp.com>; "Daniel Shrager" <DShrager@galleongrp.com>; "Rick Sherlund" <rsherlund@galleongrp.com>; "Ian Winer" <iwiner@galleongrp.com>; "Byron Walker" <bwalker@galleongrp.com>; "Ankur Desai" <adesai@galleongrp.com>; "Peter Swartz" <pswartz@galleongrp.com>; "Kris Tomasulo" <KTomasulo@galleongrp.com>; "Adam Smith" <ASmith@galleongrp.com>; "Raj Rajaratnam" <RajRajaratnam@galleongrp.com>; "Rengan Rajaratnam" <rengan@galleongrp.com>; "Paul Yook" <PYook@galleongrp.com>; "David Bauer" <dbauer@galleongrp.com>; "Charlie Benziger" <cbenziger@galleongrp.com>; "Leon Shaulov" <LShaulov@galleongrp.com>; "Ian Horowitz" <ihorowitz@galleongrp.com>; "Sanjay Santhanam" <ssanthanam@galleonasia.com>; "Rick Schutte" <rschutte@galleongrp.com>; "Todd Deutsch" <TDeutsch@galleongrp.com>; "Gary Rosenbach" <GRosenbach@galleongrp.com>; "Sarah Good" <sgood@galleongrp.com>; "Michael Cardillo" <MCardillo@galleongrp.com>; "Nathaniel Cohn" <Ncohn@galleongrp.com>

I believe the bar is set higher this qtr versus last qtr for net customer adds and ARPU growth and that their very high penetration of customers within the media and ecommerce vertical will likely make improving these metrics more challenging in the existing environment. I also believe that intra-quarter jitters over how the quarter closed will put incremental pressure on the shares from current levels. Also, a potential actors' strike could create headline risk in the name in the short term. The Actors' Guild contract expires June 30.

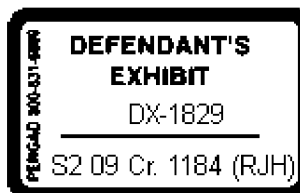
Jessica Kourakos
The Galleon Group
(212) 318-3713
jkourakos@galleongrp.com

The Galleon Group archives and reviews incoming and outgoing e-mail. This e-mail is confidential and for use by the addressee only. If you are not the intended recipient of this e-mail and have received it in error, please return the message to the sender by replying to it and then delete it from your mailbox.

This email has been scanned by the MessageLabs Email Security System.
For more information please visit <http://www.messagelabs.com/email>

this e-mail is confidential and for use by the addressee only. If you are not the intended recipient of this e-mail and have received it in error, please return the message to the sender by replying to it and then delete it from your mailbox.

This email has been scanned by the MessageLabs Email Security System.
For more information please visit <http://www.messagelabs.com/email>

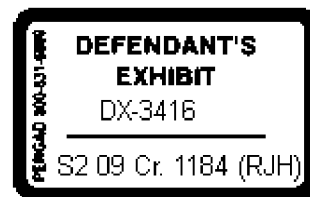


DX-1829-00001

DX-3416

DX-3416

Security	Timestamp	TradeDate	Side	Amount	Done	AvgPrc	Mgr	Trdr	Status	Alcd	Ntfy	Broker	Comm	TradeID			
ICST	1/3/2005 9	56 48 AM	1/3/2005 12	0	12:00 PM	Short	20000	20000	21.045	COM	RJ	DONE	A	B	FCAP	0.04	2005010300T0
ICST	1/6/2005 2	5 20 PM	1/6/2005 12	0	12:00 PM	Cover	20000	20000	19.6175	COM	MC	DONE	A	B	SILK	0.02	2005010600EW
ICST	1/7/2005 2	44 35 PM	1/7/2005 12	0	12:00 PM	Short	20000	20000	19.36	COM	RJ	DONE	A	B	PRUS	0.05	2005010700KT
ICST	1/10/2005 10	33 58 AM	1/10/2005 12	0	12:00 PM	Short	50000	50000	19.7659	COM	RJ	DONE	A	B	DBKS	0.05	200501100008E
ICST	1/13/2005 9	15 27 AM	1/12/2005 12	0	12:00 PM	Cover	10000	10000	19.8055	COM	RJ	DONE	A	B	MSPP	0.01	20050113002D
ICST	1/13/2005 3	39 48 PM	1/13/2005 3	39 48 PM		Short	50000	13851	19.56	TOD	TD	PART	A	B	TSCO	0.005	2005011300JW
ICST	1/19/2005 3	40 28 PM	1/19/2005 12	0	12:00 PM	Cover	20000	20000	19.2408	COM	RJ	DONE	A	B	PCSS	0.04	2005011900GU
ICST	1/20/2005 1	7 7:00 PM	1/20/2005 1	7	7:00 PM	Cover	13900	13900	19.48	TOD	TD	DONE	A	B	TSCO	0.005	2005012000CR
ICST	1/20/2005 10	4 21 AM	1/20/2005 12	0	12:00 PM	Cover	40000	40000	19.3975	COM	RJ	DONE	A	B	BOFA	0.05	2.00501E+11
ICST	2/11/2005 10	8 27 AM	2/11/2005 10	8 27 AM		Buy	13475	13475	19.5399	BCC	SW	DONE	A	B	TSCO	0.005	20050211005B
ICST	2/11/2005 9	30 46 AM	2/11/2005 12	0	12:00 PM	Buy	25000	17500	18.6857	BCC	SW	PART	A	B	LEHM	0.05	20050211002M
ICST	2/11/2005 12	3 23 PM	2/11/2005 12	3 23 PM		Sell	12500	12500	19.6472	BCC	SW	DONE	A	B	TSCO	0.005	2005021100CR
ICST	2/14/2005 1	34 35 PM	2/14/2005 1	34 35 PM		Buy	25000	25000	19.7549	BCC	SW	DONE	A	B	TSCO	0.005	2005021400D8
ICST	2/15/2005 11	12 32 AM	2/15/2005 11	12 32 AM		Buy	25000	3518	20.52	BCC	SW	PART	A	B	TSCO	0.005	2005021500AC
ICST	2/15/2005 1	57 18 PM	2/15/2005 12	0	12:00 PM	Buy	250000	120000	20.4149	GRC	JP	PART	A	B	JPHQ	0.05	2005021500H3
ICST	2/15/2005 1	57 30 PM	2/15/2005 12	0	12:00 PM	Buy	50000	27500	20.4149	GCB	JP	PART	A	B	JPHQ	0.05	2005021500H5
ICST	2/15/2005 1	58 11:00 PM	2/15/2005 12	0	12:00 PM	Buy	100000	45000	20.4149	TOD	JP	PART	A	B	JPHQ	0.05	2005021500H8
ICST	2/15/2005 1	58 20 PM	2/15/2005 12	0	12:00 PM	Buy	100000	45000	20.4149	COM	JP	PART	A	B	JPHQ	0.05	2005021500HA
ICST	2/15/2005 3	58 54 PM	2/15/2005 12	0	12:00 PM	Buy	45000	15000	20.2161	TOD	JP	PART	A	B	MSCO	0.05	2005021500M7
ICST	2/15/2005 3	59 5:00 PM	2/15/2005 12	0	12:00 PM	Buy	22500	7500	20.2161	GCB	JP	PART	A	B	MSCO	0.05	2005021500M8
ICST	2/15/2005 3	59 28 PM	2/15/2005 12	0	12:00 PM	Buy	130000	42500	20.2161	GRC	JP	PART	A	B	MSCO	0.05	2005021500MA
ICST	2/15/2005 3	59 49 PM	2/15/2005 12	0	12:00 PM	Buy	45000	15000	20.2161	COM	JP	PART	A	B	MSCO	0.05	2005021500MB
ICST	2/15/2005 11	13 38 AM	2/15/2005 12	0	12:00 PM	Buy	21000	21000	20.54	BCC	SW	DONE	A	B	LEHM	0.05	2005021500AF
ICST	2/15/2005 12	56 48 PM	2/15/2005 12	0	12:00 PM	Buy	10000	10000	20.375	BCC	SW	DONE	A	B	LEHM	0.05	2005021500DR
ICST	2/16/2005 3	45 49 PM	2/16/2005 12	0	12:00 PM	Buy	42500	42500	19.96	GRC	RJ	DONE	A	B	CEUT	0.04	2005021600M7
ICST	2/16/2005 3	45 59 PM	2/16/2005 12	0	12:00 PM	Buy	7500	7500	19.96	GCB	RJ	DONE	A	B	CEUT	0.04	2005021600M8
ICST	2/16/2005 4	7 26 PM	2/16/2005 12	0	12:00 PM	Buy	125000	125000	19.9633	GRC	JP	DONE	A	B	LEHM	0.05	2005021600O3
ICST	2/16/2005 4	7 42 PM	2/16/2005 12	0	12:00 PM	Buy	25000	25000	19.9633	GCB	JP	DONE	A	B	LEHM	0.05	2005021600O8
ICST	2/16/2005 3	26 50 PM	2/16/2005 3	26 50 PM		Buy	99000	2600	19.93	TOD	TD	PART	A	B	TSCO	0.005	2005021600L3
ICST	2/17/2005 8	16 4:00 AM	2/16/2005 12	0	12:00 PM	Buy	22000	22000	22	BCC	MC	DONE	A	B	LEHM	0.05	20050217001Y
ICST	2/17/2005 10	30 16 AM	2/17/2005 10	30 16 AM		Buy	99000	65755	19.72	TOD	TD	PART	A	B	TSCO	0.005	20050217008N
ICST	2/17/2005 4	9 5:00 PM	2/17/2005 12	0	12:00 PM	Buy	120000	120000	19.875	COM	IH	DONE	A	B	JPHQ	0.05	2005021700NW
ICST	2/17/2005 4	9 46 PM	2/17/2005 12	0	12:00 PM	Buy	115000	115000	19.875	TOD	IH	DONE	A	B	JPHQ	0.05	2005021700NY
ICST	2/17/2005 4	10 35 PM	2/17/2005 12	0	12:00 PM	Buy	100000	100000	19.875	GRC	IH	DONE	A	B	JPHQ	0.05	2005021700O0
ICST	2/17/2005 4	11 14 PM	2/17/2005 12	0	12:00 PM	Buy	15000	15000	19.875	GCB	IH	DONE	A	B	JPHQ	0.05	2005021700O2
ICST	2/18/2005 4	3 51 PM	2/18/2005 12	0	12:00 PM	Buy	53000	53000	19.8874	COM	IH	DONE	A	B	JPHQ	0.05	2005021800LM
ICST	2/18/2005 4	6 22 PM	2/18/2005 12	0	12:00 PM	Buy	87000	87000	19.8874	TOD	IH	DONE	A	B	JPHQ	0.05	2005021800LO
ICST	2/18/2005 4	7 17 PM	2/18/2005 12	0	12:00 PM	Buy	33000	33000	19.8874	COM	IH	DONE	A	B	JPHQ	0.05	2005021800LQ
ICST	2/18/2005 4	8 24 PM	2/18/2005 12	0	12:00 PM	Buy	70000	70000	19.8874	GRC	IH	DONE	A	B	JPHQ	0.05	2005021800LS
ICST	2/18/2005 4	8 58 PM	2/18/2005 12	0	12:00 PM	Buy	17000	17000	19.8874	GCB	IH	DONE	A	B	JPHQ	0.05	2005021800LT
ICST	2/22/2005 4	2 38 PM	2/22/2005 12	0	12:00 PM	Buy	25000	25000	19.9721	POA	AW	DONE	A	B	SILK	0.02	2005022200MS
ICST	2/22/2005 9	44 15 AM	2/22/2005 12	0	12:00 PM	Buy	50000	50000	19.75	GRC	JP	DONE	A	B	LEHM	0.05	2.00502E+11
ICST	2/22/2005 9	44 22 AM	2/22/2005 12	0	12:00 PM	Buy	10000	10000	19.75	GCB	JP	DONE	A	B	LEHM	0.05	2.00502E+11
ICST	2/22/2005 12	28 33 PM	2/22/2005 12	28 33 PM		Buy	30000	30000	20.02	TOD	TD	DONE	A	B	TSCO	0.005	2005022200EI
ICST	2/23/2005 10	19 57 AM	2/23/2005 10	19 57 AM		Buy	100000	100000	19.9	TOD	TD	DONE	A	B	TSCO	0.005	20050223007I
ICST	2/23/2005 3	35 12:00 PM	2/23/2005 12	0	12:00 PM	Buy	25000	25000	19.77	POA	RJ	DONE	A	B	PRUS	0.05	2005022300J9
ICST	2/23/2005 4	9 7:00 PM	2/23/2005 12	0	12:00 PM	Buy	25000	25000	19.4973	GRC	RJ	DONE	A	B	INST	0.02	2005022300KK
ICST	2/23/2005 4	9 46 PM	2/23/2005 12	0	12:00 PM	Buy	5580	5580	19.4973	GCB	RJ	DONE	A	B	INST	0.02	2005022300KP
ICST	2/23/2005 9	37 40 AM	2/23/2005 9	37 40 AM		Buy	260000	72900	19.792	COM	IH	PART	A	B	MSPP	0.01	20050223003D
ICST	2/24/2005 1	55 15 PM	2/24/2005 1	55 15 PM		Buy	73869	73869	20.1015	TOD	TD	DONE	A	B	TSCO	0.005	2005022400DU
ICST	2/24/2005 4	3 23 PM	2/24/2005 12	0	12:00 PM	Buy	15000	15000	20.0621	GRC	RJ	DONE	A	B	INST	0.02	2005022400JO
ICST	2/24/2005 4	3 40 PM	2/24/2005 12	0	12:00 PM	Buy	3000	3000	20.0621	GCB	RJ	DONE	A	B	INST	0.02	2005022400JP
ICST	2/24/2005 4	48 38 PM	2/24/2005 12	0	12:00 PM	Buy	50000	50000	19.7	GRC	JP	DONE	A	B	LEHM	0.05	2005022400LM



Security	Timestamp	TradeDate	Side	Amount	Done	AvgPrc	Mgr	Trdr	Status	Alcd	Ntfy	Broker	Comm	TradeID			
ICST	2/24/2005 4	48 52 PM	2/24/2005 12	0	12:00 PM	Buy	10000	10000	19.7	GCB	JP	DONE	A	B	LEHM	0.05	2005022400LN
ICST	2/24/2005 9	59 54 AM	2/24/2005 9	59 54 AM	Buy	21900	9900	19.6853	COM	IH	PART	A	B	MSPP	0.01	20050224004W	
ICST	2/25/2005 4	7 12:00 PM	2/25/2005 12	0	12:00 PM	Sell	18800	18800	20.5	COM	AW	DONE	A	B	JPHQ	0.05	2005022500M3
ICST	2/25/2005 4	11 40 PM	2/25/2005 12	0	12:00 PM	Buy	55000	55000	20.4647	GRC	RJ	DONE	A	B	INST	0.02	2005022500MC
ICST	2/25/2005 4	11 57 PM	2/25/2005 12	0	12:00 PM	Buy	11000	11000	20.4647	GCB	RJ	DONE	A	B	INST	0.02	2005022500MD
ICST	2/25/2005 12	18 38 PM	2/25/2005 12	0	12:00 PM	Sell	20000	20000	20.5033	COM	AW	DONE	A	B	JPHQ	0.05	2005022500CW
ICST	2/25/2005 12	19 32 PM	2/25/2005 12	0	12:00 PM	Sell	20000	20000	20.5033	TOD	AW	DONE	A	B	JPHQ	0.05	2005022500CZ
ICST	2/25/2005 12	23 32 PM	2/25/2005 12	0	12:00 PM	Sell	15000	15000	20.5033	GRC	AW	DONE	A	B	JPHQ	0.05	2005022500D2
ICST	2/25/2005 12	23 57 PM	2/25/2005 12	0	12:00 PM	Sell	5000	5000	20.5033	GCB	AW	DONE	A	B	JPHQ	0.05	2005022500D3
ICST	2/25/2005 12	11 3:00 PM	2/25/2005 12	11 3:00 PM	Sell	24000	24000	20.5	TOD	TD	DONE	A	B	TSCO	0.005	2005022500CE	
ICST	2/28/2005 9	48 26 AM	2/28/2005 12	0	12:00 PM	Sell	25000	25000	20.72	COM	AW	DONE	A	B	JPHQ	0.05	2.00502E+11
ICST	2/28/2005 9	45 36 AM	2/28/2005 9	45 36 AM	Buy	20000	20000	20.7185	BUA	BG	DONE	A	B	TSCO	0.005	20050228004U	
ICST	3/1/2005 7	15 6:00 AM	2/28/2005 12	0	12:00 PM	Buy	149000	149000	20.2738	TOD	CW	DONE	A	B	TSCO	0.005	20050301000P
ICST	3/1/2005 10	6 57 AM	3/1/2005 10	6 57 AM	Buy	18362	18362	20.3349	COM	IH	DONE	A	B	TSCO	0.005	20050301006Z	
ICST	3/1/2005 10	23 27 AM	3/1/2005 10	23 27 AM	Sell	3362	3362	20.3362	COM	IH	DONE	A	B	TSCO	0.005	2.00503E+11	
ICST	3/1/2005 2	3 45 PM	3/1/2005 12	0	12:00 PM	Buy	10000	10000	20.5657	GRC	RJ	DONE	A	B	INST	0.02	2005030100F9
ICST	3/1/2005 4	7 35 PM	3/1/2005 12	0	12:00 PM	Buy	2000	2000	20.5657	GCB	RJ	DONE	A	B	INST	0.02	2005030100KW
ICST	3/1/2005 3	3 13 PM	3/1/2005 3	3 13 PM	Buy	21000	4268	20.35	TOD	TD	PART	A	B	TSCO	0.005	2005030100HA	
ICST	3/1/2005 9	57 32 AM	3/1/2005 9	57 32 AM	Sell	20000	20000	20.1188	BUA	BG	DONE	A	B	TSCO	0.005	2.00503E+11	
ICST	3/2/2005 11	29 44 AM	3/2/2005 12	0	12:00 PM	Buy	135000	135000	20.3676	GRC	RJ	DONE	A	B	DBKS	0.05	20050302009V
ICST	3/2/2005 11	29 52 AM	3/2/2005 12	0	12:00 PM	Buy	27000	27000	20.3676	GCB	RJ	DONE	A	B	DBKS	0.05	20050302009W
ICST	3/3/2005 7	13 49 AM	3/2/2005 12	0	12:00 PM	Buy	166000	166000	19.9066	TOD	CW	DONE	A	B	TSCO	0.005	20050303000S
ICST	3/3/2005 10	55 59 AM	3/3/2005 10	55 59 AM	Buy	50000	50000	18.9494	BUA	BG	DONE	A	B	TSCO	0.005	20050303000T	
ICST	3/3/2005 11	17 21 AM	3/3/2005 11	17 21 AM	Buy	38294	38294	18.8522	BCC	LS	DONE	A	B	TSCO	0.005	20050303009X	
ICST	3/3/2005 12	59 43 PM	3/3/2005 12	0	12:00 PM	Buy	50000	50000	18.7	GRC	RJ	DONE	A	B	SBSH	0.05	2.01E+16
ICST	3/3/2005 12	59 51 PM	3/3/2005 12	0	12:00 PM	Buy	10000	10000	18.7	GCB	RJ	DONE	A	B	SBSH	0.05	2.01E+17
ICST	3/4/2005 7	30 10:00 AM	3/3/2005 12	0	12:00 PM	Buy	50000	50000	18.88	TOD	CW	DONE	A	B	TSCO	0.005	20050304001J
ICST	3/4/2005 10	29 43 AM	3/4/2005 10	29 43 AM	Sell	29650	29650	19.3899	BCC	LS	DONE	A	B	TSCO	0.005	2.00503E+11	
ICST	3/4/2005 2	1 15 PM	3/4/2005 12	0	12:00 PM	Buy	150000	150000	19.3435	GRC	RJ	DONE	A	B	LEHM	0.05	2005030400HK
ICST	3/4/2005 2	1 21 PM	3/4/2005 12	0	12:00 PM	Buy	30000	30000	19.3435	GCB	RJ	DONE	A	B	LEHM	0.05	2005030400HL
ICST	3/4/2005 2	33 4:00 PM	3/4/2005 2	33 4:00 PM	Buy	20000	20000	19.3432	BCC	LS	DONE	A	B	TSCO	0.005	2005030400IG	
ICST	3/4/2005 9	42 18 AM	3/4/2005 9	42 18 AM	Sell	50000	50000	19.2049	BUA	BG	DONE	A	B	TSCO	0.005	20050304004W	
ICST	3/7/2005 11	15 24 AM	3/7/2005 11	15 24 AM	Buy	25000	11446	19.6441	BCC	LS	PART	A	B	TSCO	0.005	20050307008V	
ICST	3/9/2005 3	9 9:00 PM	3/9/2005 12	0	12:00 PM	Sell	5000	5000	19.55	BCC	JP	DONE	A	B	JPHQ	0.05	2005030900ID
ICST	3/9/2005 3	9 35 PM	3/9/2005 12	0	12:00 PM	Sell	15000	15000	19.55	GRC	JP	DONE	A	B	JPHQ	0.05	2005030900IE
ICST	3/9/2005 3	9 47 PM	3/9/2005 12	0	12:00 PM	Sell	5000	5000	19.55	GCB	JP	DONE	A	B	JPHQ	0.05	2005030900IG
ICST	3/9/2005 4	50 34 PM	3/9/2005 12	0	12:00 PM	Buy	12500	12500	19.5521	GRC	RJ	DONE	A	B	INST	0.02	2005030900MB
ICST	3/9/2005 4	50 48 PM	3/9/2005 12	0	12:00 PM	Buy	3000	3000	19.5521	GCB	RJ	DONE	A	B	INST	0.02	2005030900MC
ICST	3/10/2005 2	9 27 PM	3/10/2005 12	0	12:00 PM	Sell	40000	40000	19.561	GRC	AW	DONE	A	B	JPHQ	0.05	2005031000FW
ICST	3/10/2005 2	10 9:00 PM	3/10/2005 12	0	12:00 PM	Sell	10000	10000	19.561	GCB	AW	DONE	A	B	JPHQ	0.05	2005031000FY
ICST	3/10/2005 4	2 42 PM	3/10/2005 12	0	12:00 PM	Sell	35000	35000	19.91	BCC	SW	DONE	A	B	SBSH	0.05	2005031000KZ
ICST	3/10/2005 4	3 5:00 PM	3/10/2005 12	0	12:00 PM	Sell	20000	20000	19.91	GRC	SW	DONE	A	B	SBSH	0.05	2005031000L1
ICST	3/10/2005 4	3 18 PM	3/10/2005 12	0	12:00 PM	Sell	5000	5000	19.91	GCB	SW	DONE	A	B	SBSH	0.05	2005031000L3
ICST	3/11/2005 10	12 8:00 AM	3/11/2005 12	0	12:00 PM	Sell	50000	50000	19.9333	GRC	JP	DONE	A	B	JPHQ	0.05	20050311006K
ICST	3/11/2005 10	12 17 AM	3/11/2005 12	0	12:00 PM	Sell	10000	10000	19.9333	GCB	JP	DONE	A	B	JPHQ	0.05	20050311006L
ICST	3/11/2005 10	17 7:00 AM	3/11/2005 12	0	12:00 PM	Sell	30000	30000	19.9183	COM	RJ	DONE	A	B	JPHQ	0.05	2.00503E+11
ICST	3/11/2005 12	59 40 PM	3/11/2005 12	59 40 PM	Buy	11000	11000	19.8981	TOD	TD	DONE	A	B	TSCO	0.005	2005031100CX	
ICST	3/14/2005 3	43 37 PM	3/14/2005 12	0	12:00 PM	Sell	37500	37500	19.815	GRC	JP	DONE	A	B	JPHQ	0.05	2005031400HX
ICST	3/14/2005 3	43 44 PM	3/14/2005 12	0	12:00 PM	Sell	11080	11080	19.815	GCB	JP	DONE	A	B	JPHQ	0.05	2005031400HY
ICST	3/15/2005 6	58 13 AM	3/14/2005 12	0	12:00 PM	Buy	40000	40000	19.8866	TOD	MD	DONE	A	B	TSCO	0.005	2.00503E+11
ICST	3/15/2005 1	33 56 PM	3/15/2005 12	0	12:00 PM	Buy	50000	50000	19.6608	GRC	RJ	DONE	A	B	LEHM	0.05	2.01E+18
ICST	3/15/2005 1	34 3:00 PM	3/15/2005 12	0	12:00 PM	Buy	10000	10000	19.6608	GCB	RJ	DONE	A	B	LEHM	0.05	2005031500EA
ICST	3/15/2005 3	3 1:00 PM	3/15/2005 12	0	12:00 PM	Sell	25000	25000	19.67	BCC	SW	DONE	A	B	JPHQ	0.05	2005031500IB

Security	Timestamp	TradeDate	Side	Amount	Done	AvgPrc	Mgr	Trdr	Status	Alcd	Ntfy	Broker	Comm	TradelD
ICST	3/15/2005 9 52 39 AM	3/15/2005 12 0 12:00 PM	Sell	27000	27000	19.92	BCC	SW	DONE	A	B	JPHQ	0.05	20050315004W
ICST	3/15/2005 9 35 24 AM	3/15/2005 9 35 24 AM	Buy	25000	5874	19.9698	BCC	LS	PART	A	B	TSCO	0.005	20050315003J
ICST	3/15/2005 9 35 53 AM	3/15/2005 9 35 53 AM	Buy	50000	50000	19.92	TOD	TD	DONE	A	B	TSCO	0.005	20050315003L
ICST	3/16/2005 1 10 56 PM	3/16/2005 12 0 12:00 PM	Sell	150000	150000	19.875	GRC	JP	DONE	A	B	TWPT	0.05	2005031600DJ
ICST	3/16/2005 1 12 52 PM	3/16/2005 12 0 12:00 PM	Sell	30000	30000	19.875	GCB	JP	DONE	A	B	TWPT	0.05	2005031600DL
ICST	3/16/2005 3 50 35 PM	3/16/2005 12 0 12:00 PM	Sell	18957	18957	19.8536	BCC	SW	DONE	A	B	LEHM	0.05	2005031600KB
ICST	3/16/2005 12 50 22 PM	3/16/2005 12 50 22 PM	Sell	50481	709	20.05	TOD	TD	PART	A	B	TSCO	0.005	2005031600CV
ICST	3/16/2005 2 30 27 PM	3/16/2005 2 30 27 PM	Sell	35000	35000	19.8258	BCC	LS	DONE	A	B	TSCO	0.005	2005031600FK
ICST	3/17/2005 2 49 57 PM	3/17/2005 12 0 12:00 PM	Sell	20000	20000	20.15	COM	AW	DONE	A	B	JPHQ	0.05	2005031700FL
ICST	3/17/2005 3 32 57 PM	3/17/2005 12 0 12:00 PM	Sell	20000	20000	20.3	COM	AW	DONE	A	B	JPHQ	0.05	2005031700GT
ICST	3/17/2005 2 17 58 PM	3/17/2005 2 17 58 PM	Sell	56000	56000	20.0878	TOD	TD	DONE	A	B	TSCO	0.005	2005031700EI
ICST	3/18/2005 4 3 19 PM	3/18/2005 12 0 12:00 PM	Buy	40000	40000	19.55	COM	AW	DONE	A	B	SBSH	0.05	2005031800HC
ICST	3/18/2005 10 28 11:00 AM	3/18/2005 12 0 12:00 PM	Sell	20000	20000	20.03	COM	AW	DONE	A	B	JPHQ	0.05	20050318006H
ICST	3/18/2005 9 34 14 AM	3/18/2005 9 34 14 AM	Buy	40000	40000	20.1	TOD	TD	DONE	A	B	TSCO	0.005	20050318002R
ICST	3/21/2005 1 55 2:00 PM	3/21/2005 12 0 12:00 PM	Buy	50000	50000	19.5158	EXC	CW	DONE	A	B	GFII	0.015	2005032100HG
ICST	3/21/2005 10 54 53 AM	3/21/2005 12 0 12:00 PM	Buy	50000	50000	19.5017	GRC	AW	DONE	A	B	SBSH	0.05	20050321009V
ICST	3/21/2005 10 55 21 AM	3/21/2005 12 0 12:00 PM	Buy	10000	10000	19.5017	GCB	AW	DONE	A	B	SBSH	0.05	20050321009X
ICST	3/22/2005 7 19 35 AM	3/21/2005 12 0 12:00 PM	Buy	135400	135400	19.5042	TOD	CW	DONE	A	B	TSCO	0.005	2.00503E+11
ICST	3/22/2005 3 32 33 PM	3/22/2005 3 32 33 PM	Buy	44850	44850	19.1	TOD	TD	DONE	A	B	INST	0.02	2005032200JE
ICST	3/24/2005 1 21 55 PM	3/24/2005 12 0 12:00 PM	Buy	100000	100000	19.3775	GRC	RJ	DONE	A	B	BOFA	0.05	2005032400GE
ICST	3/24/2005 1 22 5:00 PM	3/24/2005 12 0 12:00 PM	Buy	20000	20000	19.3775	GCB	RJ	DONE	A	B	BOFA	0.05	2005032400GF
ICST	3/24/2005 9 43 56 AM	3/24/2005 9 43 56 AM	Buy	3000	3000	19.22	TOD	TD	DONE	A	B	INST	0.02	2.00503E+11
ICST	3/28/2005 8 13 37 AM	3/24/2005 12 0 12:00 PM	Buy	100000	100000	19.348	TOD	MC	DONE	A	B	BEST	0.05	2.00503E+11
ICST	3/28/2005 10 30 39 AM	3/28/2005 12 0 12:00 PM	Sell	25000	25000	19.5	GRC	RJ	DONE	A	B	MSCO	0.05	20050328006Y
ICST	3/28/2005 10 30 51 AM	3/28/2005 12 0 12:00 PM	Sell	5000	5000	19.5	GCB	RJ	DONE	A	B	MSCO	0.05	20050328006Z
ICST	3/30/2005 10 23 38 AM	3/30/2005 10 23 38 AM	Buy	13000	6036	18.82	TOD	TD	PART	A	B	TSCO	0.005	20050330007D
ICST	3/30/2005 1 7 18 PM	3/30/2005 12 0 12:00 PM	Sell	40000	40000	19.28	COM	AW	DONE	A	B	LEHM	0.05	2005033000F8
ICST	3/30/2005 12 12 21 PM	3/30/2005 12 0 12:00 PM	Sell	125000	125000	19.25	GRC	JP	DONE	A	B	COWN	0.04	2005033000DN
ICST	3/30/2005 12 12 33 PM	3/30/2005 12 0 12:00 PM	Sell	25000	25000	19.25	GCB	JP	DONE	A	B	COWN	0.05	2005033000DO
ICST	3/30/2005 3 48 17 PM	3/30/2005 3 48 17 PM	Sell	3000	3000	19.29	TOD	TD	DONE	A	B	TSCO	0.005	2005033000LV
ICST	3/31/2005 10 12 12:00 AM	3/31/2005 10 12 12:00 AM	Buy	44463	44463	19.02	TOD	TD	DONE	A	B	TSCO	0.005	2.00503E+11
ICST	4/1/2005 3 51 48 PM	4/1/2005 12 0 12:00 PM	Buy	25000	25000	18.8914	COM	AW	DONE	A	B	MLCO	0.05	2005040100KF
ICST	4/1/2005 11 8 43 AM	4/1/2005 12 0 12:00 PM	Buy	25000	25000	18.8926	COM	AW	DONE	A	B	DBKS	0.05	2005040100A4
ICST	4/4/2005 11 14 22 AM	4/4/2005 11 14 22 AM	Buy	56300	56300	18.6896	TOD	TD	DONE	A	B	TSCO	0.005	2005040400B1
ICST	4/6/2005 4 11 25 PM	4/6/2005 12 0 12:00 PM	Buy	6000	6000	18.8658	GCB	RJ	DONE	A	B	INST	0.02	2005040600NM
ICST	4/7/2005 12 5 34 PM	4/7/2005 12 0 12:00 PM	Buy	50000	50000	18.5	GRC	JP	DONE	A	B	LEHM	0.05	2005040700D6
ICST	4/7/2005 12 6 3:00 PM	4/7/2005 12 0 12:00 PM	Buy	10000	10000	18.5	GCB	JP	DONE	A	B	LEHM	0.05	2005040700D8
ICST	4/11/2005 4 0 36 PM	4/11/2005 12 0 12:00 PM	Buy	10000	10000	18.5135	GRC	JP	DONE	A	B	INST	0.02	2005041100H6
ICST	4/11/2005 4 0 53 PM	4/11/2005 12 0 12:00 PM	Buy	3742	3742	18.5132	GCB	JP	DONE	A	B	INST	0.02	2005041100H9
ICST	4/12/2005 10 31 15 AM	4/12/2005 12 0 12:00 PM	Buy	25000	12000	18.3187	GRC	JP	PART	A	B	INST	0.02	2.00504E+11
ICST	4/12/2005 10 39 25 AM	4/12/2005 12 0 12:00 PM	Buy	5000	3000	18.3187	GCB	JP	PART	A	B	INST	0.02	20050412008K
ICST	4/14/2005 11 57 54 AM	4/14/2005 12 0 12:00 PM	Sell	80500	80500	18.3274	GRC	JP	DONE	A	B	PIPR	0.05	2005041400DB
ICST	4/14/2005 11 58 1:00 AM	4/14/2005 12 0 12:00 PM	Sell	22742	22742	18.3274	GCB	JP	DONE	A	B	PIPR	0.05	2005041400DC
ICST	4/14/2005 12 33 58 PM	4/14/2005 12 0 12:00 PM	Buy	8500	8500	18.28	GRC	JP	DONE	A	B	MLCO	0.05	2005041400EX
ICST	4/15/2005 7 48 7:00 AM	4/14/2005 12 0 12:00 PM	Buy	6000	6000	18.5282	GCB	MC	DONE	A	B	INST	0.02	2.00504E+11
ICST	4/19/2005 3 54 9:00 PM	4/19/2005 12 0 12:00 PM	Sell	6000	6000	17.7671	GCB	JP	DONE	A	B	INST	0.02	2005041900LK
ICST	4/19/2005 10 33 9:00 AM	4/19/2005 12 0 12:00 PM	Buy	200000	150000	17.885	GRC	JP	PART	A	B	SBSH	0.05	2.00504E+11
ICST	4/19/2005 10 33 16 AM	4/19/2005 12 0 12:00 PM	Buy	40000	20000	17.885	GCB	JP	PART	A	B	SBSH	0.05	2.00504E+11
ICST	4/20/2005 11 10 5:00 AM	4/20/2005 12 0 12:00 PM	Sell	50000	50000	18.521	COM	AW	DONE	A	B	JPHQ	0.05	2005042000BU
ICST	4/20/2005 9 46 18 AM	4/20/2005 9 46 18 AM	Buy	30100	30100	18.3905	TOD	TD	DONE	A	B	TSCO	0.005	20050420005F
ICST	4/21/2005 3 36 22 PM	4/21/2005 12 0 12:00 PM	Buy	25000	25000	18.6995	GRC	JP	DONE	A	B	SILK	0.02	2005042100NV
ICST	4/21/2005 3 36 34 PM	4/21/2005 12 0 12:00 PM	Buy	5000	5000	18.6995	GCB	JP	DONE	A	B	SILK	0.02	2005042100NW
ICST	4/21/2005 4 40 15 PM	4/21/2005 12 0 12:00 PM	Buy	3585	3585	18.4846	GCB	JP	DONE	A	B	INST	0.02	2005042100S5

Security	Timestamp	TradeDate	Side	Amount	Done	AvgPrc	Mgr	Trdr	Status	Alcd	Ntfy	Broker	Comm	TradeID
ICST	4/21/2005 12 15 52 PM	4/21/2005 12	0 12:00 PM Buy	3585	3585	18.4846	GCB	JP	DONE	A	B	INST	0.02	2005042100EQ
ICST	4/21/2005 12 4 12:00 PM	4/21/2005 12	4 12:00 PM Sell	50000	8515	18.7	TOD	TD	PART	A	B	TSCO	0.005	2005042100DW
ICST	4/22/2005 3 54 43 PM	4/22/2005 12	0 12:00 PM Buy	15000	15000	18.3067	GRC	JP	DONE	A	B	INST	0.02	2005042200J6
ICST	4/22/2005 3 54 57 PM	4/22/2005 12	0 12:00 PM Buy	2000	2000	18.3067	GCB	JP	DONE	A	B	INST	0.02	2005042200J7
ICST	4/25/2005 10 0 18 AM	4/25/2005 10	0 18 AM Buy	58000	58000	18.1276	TOD	TD	DONE	A	B	TSCO	0.005	20050425005O
ICST	4/25/2005 3 6 20 PM	4/25/2005 12	0 12:00 PM Sell	25000	25000	18.1	POA	JP	DONE	A	B	PACS	0.04	2005042500G6
ICST	4/26/2005 8 21 38 AM	4/25/2005 12	0 12:00 PM Buy	10000	10000	18.17	BUJ	MC	DONE	A	B	INST	0.02	20050426001D
ICST	4/26/2005 11 46 15 AM	4/26/2005 12	0 12:00 PM Sell	25000	25000	17.9868	POA	JP	DONE	A	B	PALC	0.03	2005042600DH
ICST	4/28/2005 3 14 17 PM	4/28/2005 12	0 12:00 PM Buy	25000	25000	17.9999	POA	AW	DONE	A	B	SILK	0.02	20050428000IL
ICST	4/28/2005 10 18 28 AM	4/28/2005 12	0 12:00 PM Buy	25000	25000	18.1052	POA	AW	DONE	A	B	SILK	0.02	20050428007Y
ICST	4/28/2005 10 22 52 AM	4/28/2005 12	0 12:00 PM Sell	58000	58000	18.1353	GRC	MS	DONE	A	B	SBSH	0.05	2.00504E+11
ICST	4/28/2005 10 23 9:00 AM	4/28/2005 12	0 12:00 PM Sell	10000	10000	18.1353	GCB	MS	DONE	A	B	SBSH	0.05	2.00504E+11
ICST	4/28/2005 10 27 6:00 AM	4/28/2005 12	0 12:00 PM Sell	34000	34000	17.9795	GRC	MS	DONE	A	B	INST	0.02	20050428008H
ICST	4/28/2005 10 27 27 AM	4/28/2005 12	0 12:00 PM Sell	6000	6000	17.9795	GCB	MS	DONE	A	B	INST	0.02	20050428008K
ICST	4/28/2005 10 27 55 AM	4/28/2005 12	0 12:00 PM Buy	6000	6000	18.1608	GCB	MS	DONE	A	B	INST	0.02	20050428008M
ICST	4/28/2005 10 42 25 AM	4/28/2005 12	0 12:00 PM Sell	10000	10000	17.8017	BUJ	JP	DONE	A	B	PALC	0.03	20050428009I
ICST	4/29/2005 1 24 42 PM	4/29/2005 1	24 42 PM Buy	10000	4260	18.0759	TOD	TD	PART	A	B	TSCO	0.005	2005042900FJ
ICST	4/29/2005 1 18 14 PM	4/29/2005 12	0 12:00 PM Buy	25000	25000	18	COM	AW	DONE	A	B	BEST	0.05	2005042900F4
ICST	4/29/2005 2 17 41 PM	4/29/2005 12	0 12:00 PM Buy	25000	25000	18.1	COM	AW	DONE	A	B	DBKS	0.05	2005042900H6
ICST	4/29/2005 2 56 35 PM	4/29/2005 12	0 12:00 PM Buy	2700	2700	18.24	GCB	MS	DONE	A	B	INST	0.02	2005042900JC
ICST	4/29/2005 2 56 55 PM	4/29/2005 12	0 12:00 PM Sell	3700	3700	18.3	GCB	MS	DONE	A	B	INST	0.02	2005042900JE
ICST	4/29/2005 3 7 36 PM	4/29/2005 12	0 12:00 PM Buy	25000	25000	18.18	COM	AW	DONE	A	B	OPCO	0.03	2005042900K4
ICST	4/29/2005 6 12 42 PM	4/29/2005 12	0 12:00 PM Sell	15000	15000	18.3	GCB	MC	DONE	A	B	SILK	0.02	2005042900PV
ICST	4/29/2005 11 52 34 AM	4/29/2005 12	0 12:00 PM Buy	100000	32000	17.8264	GRC	JP	PART	A	B	SILK	0.02	2005042900BD
ICST	4/29/2005 11 52 42 AM	4/29/2005 12	0 12:00 PM Buy	20000	8000	17.8264	GCB	JP	PART	A	B	SILK	0.02	2005042900BE
ICST	4/29/2005 3 28 55 PM	4/29/2005 3	28 55 PM Buy	25000	25000	18.212	COM	IH	DONE	A	B	INST	0.02	2005042900KV
ICST	5/2/2005 8 55 18 AM	5/2/2005 12	0 12:00 PM Buy	15000	15000	18.2061	GCB	MC	DONE	A	B	INST	0.02	20050502001I
ICST	5/2/2005 10 7 37 AM	5/2/2005 12	0 12:00 PM Sell	50000	10000	18.6	GRC	JP	PART	A	B	INST	0.02	20050502005K
ICST	5/2/2005 10 48 46 AM	5/2/2005 12	0 12:00 PM Buy	17700	17700	18.2416	GRC	MS	DONE	A	B	INST	0.02	20050502008N
ICST	5/2/2005 10 49 3:00 AM	5/2/2005 12	0 12:00 PM Buy	3547	3547	18.2416	GCB	MS	DONE	A	B	INST	0.02	20050502008O
ICST	5/3/2005 7 4 55 AM	5/2/2005 12	0 12:00 PM Buy	137150	137150	18.2297	TOD	MD	DONE	A	B	TSCO	0.005	2.00505E+11
ICST	5/3/2005 9 45 25 AM	5/3/2005 9	45 25 AM Buy	9000	9000	18.22	TOD	TD	DONE	A	B	TSCO	0.005	20050503004M
ICST	5/4/2005 10 5 40 AM	5/4/2005 10	5 40 AM Buy	70035	70035	18.0628	TOD	TD	DONE	A	B	TSCO	0.005	20050504006Z
ICST	5/4/2005 2 25 9:00 PM	5/4/2005 12	0 12:00 PM Buy	15000	12500	18.1721	GRC	MS	PART	A	B	INST	0.02	2005050400JW
ICST	5/4/2005 3 59 31 PM	5/4/2005 12	0 12:00 PM Buy	3000	2500	18.1721	GCB	MS	PART	A	B	INST	0.02	2005050400P0
ICST	5/4/2005 4 12 31 PM	5/4/2005 12	0 12:00 PM Buy	3200	3200	18.0631	COM	AW	DONE	A	B	GFII	0.015	2005050400Q4
ICST	5/5/2005 1 48 44 PM	5/5/2005 1	48 44 PM Buy	25000	2300	18.91	BCC	SW	PART	A	B	TSCO	0.005	2005050500HK
ICST	5/5/2005 10 4 21 AM	5/5/2005 10	4 21 AM Sell	34128	34128	18.7493	TOD	TD	DONE	A	B	TSCO	0.005	20050505006H
ICST	5/5/2005 1 21 55 PM	5/5/2005 12	0 12:00 PM Buy	50000	50000	18.8661	BUA	SW	DONE	A	B	GSCO	0.05	2005050500GH
ICST	5/5/2005 4 4 4:00 PM	5/5/2005 12	0 12:00 PM Sell	50000	50000	18.8768	COM	IH	DONE	A	B	GFII	0.015	2005050500MK
ICST	5/5/2005 11 33 11:00 AM	5/5/2005 12	0 12:00 PM Buy	175000	100000	18.8661	BCC	SW	PART	A	B	GSCO	0.05	2005050500BJ
ICST	5/5/2005 12 54 16 PM	5/5/2005 12	0 12:00 PM Buy	100000	25000	18.59	GRC	JP	PART	A	B	WARB	0.05	2005050500ET
ICST	5/5/2005 12 54 32 PM	5/5/2005 12	0 12:00 PM Buy	20000	5000	18.59	GCB	JP	PART	A	B	WARB	0.05	2005050500EU
ICST	5/6/2005 7 11 59 AM	5/5/2005 12	0 12:00 PM Buy	63277	63277	18.05	TOD	CW	DONE	A	B	TSCO	0.005	2.00505E+11
ICST	5/6/2005 3 59 37 PM	5/6/2005 12	0 12:00 PM Buy	21800	21800	19.06	COM	AW	DONE	A	B	JEFF	0.03	2005050600IV
ICST	5/6/2005 4 51 57 PM	5/6/2005 12	0 12:00 PM Buy	7100	7100	18.8	BCC	MC	DONE	A	B	GSCO	0.05	2005050600K4
ICST	5/6/2005 10 52 43 AM	5/6/2005 12	0 12:00 PM Sell	50000	50000	19	GRC	JP	DONE	A	B	MSCO	0.05	20050506009C
ICST	5/6/2005 10 52 58 AM	5/6/2005 12	0 12:00 PM Sell	10000	10000	19	GCB	JP	DONE	A	B	MSCO	0.05	20050506009D
ICST	5/10/2005 1 10 59 PM	5/10/2005 12	0 12:00 PM Sell	50000	50000	19.1802	GRC	JP	DONE	A	B	MSCO	0.05	2005051000BD
ICST	5/10/2005 1 11 7:00 PM	5/10/2005 12	0 12:00 PM Sell	10000	10000	19.1802	GCB	JP	DONE	A	B	MSCO	0.05	2005051000BE
ICST	5/10/2005 2 39 51 PM	5/10/2005 2	39 51 PM Buy	50000	17327	19.0233	TOD	TD	PART	A	B	TSCO	0.005	2005051000DR
ICST	5/11/2005 10 4 1:00 AM	5/11/2005 10	4 1:00 AM Buy	33000	33000	18.84	TOD	TD	DONE	A	B	TSCO	0.005	2.00505E+11
ICST	5/11/2005 2 51 40 PM	5/11/2005 12	0 12:00 PM Buy	70000	70000	19.19	COM	JP	DONE	A	B	PALC	0.01	2005051100FK

Security	Timestamp	TradeDate	Side	Amount	Done	AvgPrc	Mgr	Trdr	Status	Alcd	Ntfy	Broker	Comm	TradeID			
ICST	5/11/2005 2	52 12:00 PM	5/11/2005 12	0	12:00 PM	Sell	70000	70000	19.19	GRC	JP	DONE	A	B	PALC	0.01	2005051100FL
ICST	5/11/2005 2	52 41 PM	5/11/2005 12	0	12:00 PM	Buy	55000	55000	19.0956	COM	IH	DONE	A	B	LEHM	0.05	2005051100FM
ICST	5/11/2005 2	53 43 PM	5/11/2005 12	0	12:00 PM	Sell	5000	5000	19.19	GRC	JP	DONE	A	B	MSCO	0.05	2005051100FN
ICST	5/11/2005 2	53 51 PM	5/11/2005 12	0	12:00 PM	Sell	15000	15000	19.19	GCB	JP	DONE	A	B	MSCO	0.05	2005051100FO
ICST	5/12/2005 3	55 24 PM	5/12/2005 12	0	12:00 PM	Buy	50000	50000	18.9669	GRC	IH	DONE	A	B	JPHQ	0.05	2005051200IX
ICST	5/12/2005 3	55 50 PM	5/12/2005 12	0	12:00 PM	Buy	15000	15000	18.9669	GCB	IH	DONE	A	B	JPHQ	0.05	2005051200IZ
ICST	5/12/2005 10	38 2:00 AM	5/12/2005 12	0	12:00 PM	Sell	25000	25000	19.178	COM	IH	DONE	A	B	JPHQ	0.05	20050512007Z
ICST	5/12/2005 12	58 28 PM	5/12/2005 12	0	12:00 PM	Buy	75000	25000	19	GRC	JP	PART	A	B	LEHM	0.05	2005051200CO
ICST	5/13/2005 10	11 15 AM	5/13/2005 12	0	12:00 PM	Sell	75000	75000	19.8588	GRC	JP	DONE	A	B	GSCO	0.05	2.00505E+11
ICST	5/13/2005 10	11 25 AM	5/13/2005 12	0	12:00 PM	Sell	15000	15000	19.8588	GCB	JP	DONE	A	B	GSCO	0.05	2.00505E+11
ICST	5/13/2005 10	17 48 AM	5/13/2005 12	0	12:00 PM	Sell	25000	25000	19.63	COM	IH	DONE	A	B	LEHM	0.05	20050513006P
ICST	5/13/2005 12	38 57 PM	5/13/2005 12	0	12:00 PM	Sell	34900	34900	19.97	BCC	SW	DONE	A	B	LEHM	0.05	2005051300CM
ICST	5/13/2005 12	45 28 PM	5/13/2005 12	0	12:00 PM	Sell	25000	25000	19.9	COM	JP	DONE	A	B	SBSH	0.05	2005051300DO
ICST	5/13/2005 9	44 21 AM	5/13/2005 9	44 21 AM		Sell	122528	122528	19.7758	TOD	TD	DONE	A	B	TSCO	0.005	20050513003W
ICST	5/16/2005 3	1 21 PM	5/16/2005 3	1 21 PM		Sell	17000	17000	19.9808	TOD	TD	DONE	A	B	TSCO	0.005	2005051600DJ
ICST	5/17/2005 11	30 11:00 AM	5/17/2005 12	0	12:00 PM	Sell	24500	24500	20	BCC	SW	DONE	A	B	LEHM	0.05	2.00505E+11
ICST	5/17/2005 11	30 28 AM	5/17/2005 12	0	12:00 PM	Sell	15000	15000	20	BUA	SW	DONE	A	B	LEHM	0.05	2.00505E+11
ICST	5/17/2005 9	54 38 AM	5/17/2005 9	54 38 AM		Sell	60000	13713	20.18	TOD	TD	PART	A	B	TSCO	0.005	20050517004D
ICST	5/18/2005 10	30 7:00 AM	5/18/2005 10	30 7:00 AM		Sell	276384	276384	20.696	TOD	TD	DONE	A	B	TSCO	0.005	2.00505E+11
ICST	5/18/2005 1	28 29 PM	5/18/2005 12	0	12:00 PM	Sell	25000	25000	20.7571	COM	IH	DONE	A	B	LEHM	0.05	2005051800G0
ICST	5/18/2005 1	49 58 PM	5/18/2005 12	0	12:00 PM	Sell	10000	10000	20.8429	BUA	SW	DONE	A	B	ADAM	0.05	2005051800GV
ICST	5/18/2005 1	50 9:00 PM	5/18/2005 12	0	12:00 PM	Sell	25000	25000	20.8429	BCC	SW	DONE	A	B	ADAM	0.05	2005051800GW
ICST	5/18/2005 11	51 24 AM	5/18/2005 12	0	12:00 PM	Sell	25000	25000	20.589	COM	IH	DONE	A	B	LEHM	0.05	2005051800BH
ICST	5/18/2005 2	32 38 PM	5/18/2005 2	32 38 PM		Sell	24616	24616	20.8419	BUA	SW	DONE	A	B	TSCO	0.005	2005051800IM
ICST	5/18/2005 2	40 11:00 PM	5/18/2005 2	40 11:00 PM		Sell	384	384	20.79	BUA	SW	DONE	A	B	TSCO	0.005	2005051800IX
ICST	5/19/2005 4	0 56 PM	5/19/2005 12	0	12:00 PM	Buy	25000	25000	20.58	COM	IH	DONE	A	B	BOFA	0.05	2005051900KU
ICST	5/19/2005 12	14 1:00 PM	5/19/2005 12	14 1:00 PM		Buy	53000	300	20.47	TOD	TD	PART	A	B	TSCO	0.005	2005051900CO
ICST	5/19/2005 9	57 28 AM	5/19/2005 9	57 28 AM		Sell	70000	23300	20.9606	TOD	TD	PART	A	B	TSCO	0.005	20050519005A
ICST	5/20/2005 2	30 21 PM	5/20/2005 12	0	12:00 PM	Buy	25000	25000	20.52	GRC	MS	DONE	A	B	INST	0.02	2005052000ER
ICST	5/20/2005 2	32 8:00 PM	5/20/2005 12	0	12:00 PM	Buy	5000	5000	20.52	GCB	MS	DONE	A	B	INST	0.02	2005052000ES
ICST	5/20/2005 9	40 45 AM	5/20/2005 12	0	12:00 PM	Buy	25000	25000	20.38	COM	JP	DONE	A	B	LEHM	0.05	20050520002X
ICST	5/20/2005 12	51 8:00 PM	5/20/2005 12	0	12:00 PM	Buy	25000	25000	20.4431	COM	MS	DONE	A	B	DBKS	0.05	2005052000BG
ICST	5/24/2005 3	59 9:00 PM	5/24/2005 12	0	12:00 PM	Sell	50000	50000	20.841	COM	IH	DONE	A	B	SBSH	0.05	2005052400IE
ICST	5/24/2005 2	28 34 PM	5/24/2005 2	28 34 PM		Sell	47000	47000	20.65	TOD	TD	DONE	A	B	TSCO	0.005	2005052400FG
ICST	5/25/2005 11	10 10:00 AM	5/25/2005 12	0	12:00 PM	Buy	2000	2000	20.965	GCB	MS	DONE	A	B	INST	0.02	2005052500AK
ICST	5/25/2005 9	56 34 AM	5/25/2005 9	56 34 AM		Buy	69500	69500	20.4607	TOD	TD	DONE	A	B	TSCO	0.005	20050525005J
ICST	5/26/2005 10	21 27 AM	5/26/2005 10	21 27 AM		Sell	70000	70000	20.7948	TOD	TD	DONE	A	B	TSCO	0.005	20050526007K
ICST	5/26/2005 1	57 39 PM	5/26/2005 12	0	12:00 PM	Sell	25000	25000	20.78	COM	IH	DONE	A	B	MSCO	0.05	2005052600G4
ICST	5/26/2005 3	44 46 PM	5/26/2005 12	0	12:00 PM	Buy	25000	25000	20.8122	GRC	MS	DONE	A	B	INST	0.02	2005052600JM
ICST	5/26/2005 3	45 12:00 PM	5/26/2005 12	0	12:00 PM	Buy	5000	5000	20.8122	GCB	MS	DONE	A	B	INST	0.02	2005052600JN
ICST	5/26/2005 4	2 16 PM	5/26/2005 12	0	12:00 PM	Sell	25000	25000	20.9133	GRC	IH	DONE	A	B	JPHQ	0.05	2005052600KI
ICST	5/26/2005 4	2 35 PM	5/26/2005 12	0	12:00 PM	Sell	5000	5000	20.9133	GCB	IH	DONE	A	B	JPHQ	0.05	2005052600KJ
ICST	5/26/2005 8	14 31 AM	5/26/2005 12	0	12:00 PM	Buy	10000	10000	20.5827	GRC	MC	DONE	A	B	INST	0.02	20050526001F
ICST	5/26/2005 10	10 35 AM	5/26/2005 12	0	12:00 PM	Sell	25000	25000	20.6035	GRC	JP	DONE	A	B	LEHM	0.05	20050526006Q
ICST	5/26/2005 10	10 54 AM	5/26/2005 12	0	12:00 PM	Sell	5000	5000	20.6035	GCB	JP	DONE	A	B	LEHM	0.05	20050526006R
ICST	5/26/2005 10	35 26 AM	5/26/2005 12	0	12:00 PM	Sell	25000	25000	20.81	COM	IH	DONE	A	B	SBSH	0.05	20050526008M
ICST	5/26/2005 11	55 38 AM	5/26/2005 12	0	12:00 PM	Sell	25000	25000	20.812	COM	IH	DONE	A	B	JPHQ	0.05	2005052600CF
ICST	5/27/2005 11	59 5:00 AM	5/27/2005 11	59 5:00 AM		Sell	20000	20000	20.9994	TOD	TD	DONE	A	B	TSCO	0.005	20050527008E
ICST	5/31/2005 1	6 20 PM	5/31/2005 1	6 20 PM		Sell	80000	1400	21.21	TOD	TD	PART	A	B	TSCO	0.005	20050531009P
ICST	5/31/2005 1	13 30 PM	5/31/2005 1	13 31 PM		Sell	80000	700	21.2043	TOD	TD	PART	A	B	TSCO	0.005	20050531009V
ICST	5/31/2005 1	20 55 PM	5/31/2005 1	20 55 PM		Sell	80000	4100	21.2127	TOD	TD	PART	A	B	TSCO	0.005	20050531009X
ICST	5/31/2005 1	26 30 PM	5/31/2005 1	26 30 PM		Sell	80000	10000	21.2388	TOD	TD	PART	A	B	TSCO	0.005	20050531009Z
ICST	5/31/2005 9	59 51 AM	5/31/2005 12	0	12:00 PM	Sell	22000	22000	21.1577	BCC	SW	DONE	A	B	LEHM	0.05	20050531003X

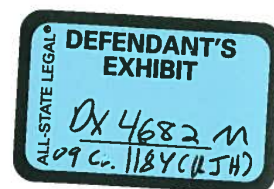
Security	Timestamp	TradeDate	Side	Amount	Done	AvgPrc	Mgr	Trdr	Status	Alcd	Ntfy	Broker	Comm	TradeID
ICST	5/31/2005 2 1 25 PM	5/31/2005 2 1 25 PM	Sell	80000	3100	21.2087	TOD	TD	PART	A	B	TSCO	0.005	2005053100B1
ICST	5/31/2005 9 35 51 AM	5/31/2005 9 35 51 AM	Sell	80000	7901	21.216	TOD	TD	PART	A	B	TSCO	0.005	20050531001W
ICST	5/31/2005 9 59 35 AM	5/31/2005 9 59 35 AM	Sell	3000	3000	21.0967	BCC	SW	DONE	A	B	TSCO	0.005	20050531003W
ICST	6/1/2005 10 14 27 AM	6/1/2005 10 14 27 AM	Sell	53200	1300	21.25	TOD	TD	PART	A	B	TSCO	0.005	20050601006B
ICST	6/1/2005 10 18 5:00 AM	6/1/2005 12 0 12:00 PM	Buy	35000	35000	21.1277	GRC	MS	DONE	A	B	INST	0.02	20050601006O
ICST	6/1/2005 10 18 18 AM	6/1/2005 12 0 12:00 PM	Buy	7000	7000	21.1277	GCB	MS	DONE	A	B	INST	0.02	20050601006Q
ICST	6/1/2005 10 33 36 AM	6/1/2005 12 0 12:00 PM	Sell	25000	25000	21.0876	COM	IH	DONE	A	B	MLCO	0.05	2.00506E+11
ICST	6/2/2005 10 33 54 AM	6/2/2005 10 33 54 AM	Sell	151000	2725	21.0529	TOD	TD	PART	A	B	TSCO	0.005	20050602006J
ICST	6/2/2005 10 47 12:00 AM	6/2/2005 12 0 12:00 PM	Buy	10000	10000	21.0502	GRC	MS	DONE	A	B	INST	0.02	2.00506E+11
ICST	6/2/2005 10 47 27 AM	6/2/2005 12 0 12:00 PM	Buy	2000	2000	21.0502	GCB	MS	DONE	A	B	INST	0.02	20050602007A
ICST	6/3/2005 4 1 19 PM	6/3/2005 12 0 12:00 PM	Buy	25000	25000	20.6	COM	IH	DONE	A	B	JPHQ	0.05	2005060300LY
ICST	6/6/2005 11 1 10:00 AM	6/6/2005 11 1 10:00 AM	Buy	52000	600	20.2	TOD	TD	PART	A	B	TSCO	0.005	20050606008L
ICST	6/6/2005 4 3 10:00 PM	6/6/2005 12 0 12:00 PM	Buy	25000	25000	20.36	COM	IH	DONE	A	B	WARB	0.05	2005060600GY
ICST	6/6/2005 11 52 55 AM	6/6/2005 12 0 12:00 PM	Buy	150000	150000	20.3105	GRC	JP	DONE	A	B	BOFA	0.05	2005060600AA
ICST	6/6/2005 11 53 3:00 AM	6/6/2005 12 0 12:00 PM	Buy	30000	30000	20.3105	GCB	JP	DONE	A	B	BOFA	0.05	2005060600AB
ICST	6/7/2005 10 0 23 AM	6/7/2005 10 0 23 AM	Sell	53700	53700	20.6807	TOD	TD	DONE	A	B	TSCO	0.005	20050607003X
ICST	6/7/2005 1 10 9:00 PM	6/7/2005 12 0 12:00 PM	Sell	25000	25000	21	COM	IH	DONE	A	B	LEHM	0.05	2005060700BV
ICST	6/7/2005 10 19 18 AM	6/7/2005 12 0 12:00 PM	Buy	15000	15000	20.7445	GRC	MS	DONE	A	B	INST	0.02	20050607005D
ICST	6/7/2005 10 20 45 AM	6/7/2005 12 0 12:00 PM	Buy	3000	3000	20.7445	GCB	MS	DONE	A	B	INST	0.02	20050607005G
ICST	6/8/2005 4 2 5:00 PM	6/8/2005 12 0 12:00 PM	Buy	12500	12500	20.1	COM	IH	DONE	A	B	JPHQ	0.05	2005060800IF
ICST	6/8/2005 9 50 12:00 AM	6/8/2005 12 0 12:00 PM	Sell	67871	67871	20.92	GRC	MS	DONE	A	B	LEHM	0.05	20050608003Z
ICST	6/8/2005 9 52 23 AM	6/8/2005 12 0 12:00 PM	Sell	16129	16129	20.92	GCB	MS	DONE	A	B	LEHM	0.05	2.00506E+11
ICST	6/9/2005 2 15 18 PM	6/9/2005 2 15 19 PM	Buy	35000	17566	20.14	TOD	TD	PART	A	B	TSCO	0.005	2005060900EO
ICST	6/10/2005 2 10 41 PM	6/10/2005 12 0 12:00 PM	Buy	125000	125000	19.5973	GRC	JP	DONE	A	B	LEHM	0.05	2005061000DZ
ICST	6/10/2005 2 10 49 PM	6/10/2005 12 0 12:00 PM	Buy	23500	23500	19.5973	GCB	JP	DONE	A	B	LEHM	0.05	2.01E+09
ICST	6/10/2005 12 44 1:00 PM	6/10/2005 12 44 1:00 PM	Buy	30000	30000	19.6992	TOD	TD	DONE	A	B	TSCO	0.005	2005061000BA
ICST	6/13/2005 9 45 42 AM	6/13/2005 9 45 42 AM	Buy	149000	77315	19.4854	TOD	TD	PART	A	B	TSCO	0.005	2.00506E+11
ICST	6/14/2005 9 36 29 AM	6/14/2005 9 36 29 AM	Buy	150000	150000	19.3348	TOD	TD	DONE	A	B	TSCO	0.005	20050614002G
ICST	6/15/2005 7 53 8:00 AM	6/14/2005 12 0 12:00 PM	Buy	12500	12500	19.314	COM	MC	DONE	A	B	LEHM	0.05	2.00506E+11
ICST	6/15/2005 7 59 41 AM	6/14/2005 12 0 12:00 PM	Buy	15000	15000	19.36	BUJ	MC	DONE	A	B	LEHM	0.05	2.00506E+11
ICST	6/15/2005 10 2 1:00 AM	6/15/2005 10 2 1:00 AM	Buy	130000	72079	19.201	TOD	TD	PART	A	B	TSCO	0.005	20050615004B
ICST	6/15/2005 2 44 27 PM	6/15/2005 12 0 12:00 PM	Buy	15000	15000	19	COM	IH	DONE	A	B	MWCC	0.06	2005061500G0
ICST	6/15/2005 3 16 13 PM	6/15/2005 12 0 12:00 PM	Sell	15000	15000	19.7017	COM	IH	DONE	A	B	MWCC	0.06	2005061500HB
ICST	6/15/2005 3 51 7:00 PM	6/15/2005 12 0 12:00 PM	Sell	25000	25000	19.713	COM	IH	DONE	A	B	LEHM	0.05	2005061500JM
ICST	6/15/2005 3 26 23 PM	6/15/2005 3 26 23 PM	Sell	42000	3600	19.8411	TOD	TD	PART	A	B	TSCO	0.005	2005061500HQ
ICST	6/16/2005 1 56 37 PM	6/16/2005 12 0 12:00 PM	Sell	50000	50000	21.967	POA	JP	DONE	A	B	LEHM	0.05	2005061600ET
ICST	6/16/2005 11 45 38 AM	6/16/2005 12 0 12:00 PM	Sell	480000	380000	22.2681	GRC	JP	PART	A	B	MSCO	0.05	2005061600AE
ICST	6/16/2005 11 47 11:00 AM	6/16/2005 12 0 12:00 PM	Sell	75000	75000	22.2681	GCB	JP	DONE	A	B	MSCO	0.05	2005061600AF
ICST	6/16/2005 11 47 33 AM	6/16/2005 12 0 12:00 PM	Sell	450000	350000	22.2681	TOD	JP	PART	A	B	MSCO	0.05	2005061600AG
ICST	6/16/2005 11 47 51 AM	6/16/2005 12 0 12:00 PM	Sell	90000	90000	22.2681	COM	JP	DONE	A	B	MSCO	0.05	2005061600AH
ICST	6/16/2005 11 48 12:00 AM	6/16/2005 12 0 12:00 PM	Sell	15000	15000	22.2681	EXC	JP	DONE	A	B	MSCO	0.05	2005061600AI
ICST	6/16/2005 11 49 24 AM	6/16/2005 12 0 12:00 PM	Sell	204000	204000	22.14	GRC	JP	DONE	A	B	LEHM	0.02	2005061600AL
ICST	6/16/2005 11 49 53 AM	6/16/2005 12 0 12:00 PM	Sell	40000	40000	22.14	GCB	JP	DONE	A	B	LEHM	0.02	2005061600AN
ICST	6/16/2005 11 50 10:00 AM	6/16/2005 12 0 12:00 PM	Sell	229000	229000	22.14	TOD	JP	DONE	A	B	LEHM	0.02	2005061600AO
ICST	6/16/2005 11 50 31 AM	6/16/2005 12 0 12:00 PM	Sell	22000	22000	22.14	COM	JP	DONE	A	B	LEHM	0.02	2005061600AP
ICST	6/16/2005 11 50 51 AM	6/16/2005 12 0 12:00 PM	Sell	5000	5000	22.14	EXC	JP	DONE	A	B	LEHM	0.02	2005061600AQ
ICST	6/16/2005 12 53 18 PM	6/16/2005 12 0 12:00 PM	Sell	4200	4200	22.5	EXC	JP	DONE	A	B	INST	0.02	2005061600CQ
ICST	6/16/2005 4 2 41 PM	6/16/2005 4 2 41 PM	Sell	10300	5196	21.82	TOD	TD	PART	A	B	TSCO	0.005	2005061600JN
ICST	6/16/2005 5 8 31 PM	6/16/2005 5 8 31 PM	Sell	10300	1000	21.82	TOD	TD	PART	A	B	TSCO	0.005	2005061600M3
ICST	6/16/2005 7 30 11:00 AM	6/16/2005 7 30 11:00 AM	Buy	100	100	21.5	TOD	TD	DONE	A	B	TSCO	0.005	2.00506E+11
ICST	6/17/2005 10 18 12:00 AM	6/17/2005 10 18 12:00 AM	Buy	156000	800	21.17	TOD	TD	PART	A	B	TSCO	0.005	20050617006X
ICST	6/20/2005 1 39 26 PM	6/20/2005 1 39 26 PM	Buy	56000	6872	21.58	TOD	TD	PART	A	B	TSCO	0.005	2005062000DA
ICST	6/21/2005 3 28 23 PM	6/21/2005 12 0 12:00 PM	Sell	115003	25000	21.6	GCB	JP	PART	A	B	LEHM	0.05	2005062100GJ

Security	Timestamp	TradeDate	Side	Amount	Done	AvgPrc	Mgr	Trdr	Status	Alcd	Ntfy	Broker	Comm	TradeID
ICST	6/21/2005 3 29 26 PM	6/21/2005 12	0 12:00 PM Sell	50000	15000	21.6	COM	JP	PART	A	B	LEHM	0.05	2005062100GK
ICST	6/21/2005 10 58 49 AM	6/21/2005 12	0 12:00 PM Sell	438314	110000	21.6	GRC	JP	PART	A	B	LEHM	0.05	20050621008D
ICST	6/21/2005 11 12 1:00 AM	6/21/2005 12	0 12:00 PM Sell	200000	50000	21.6	TOD	JP	PART	A	B	LEHM	0.05	20050621008X
ICST	6/22/2005 10 44 27 AM	6/22/2005 10	44 27 AM Buy	89000	89000	21.4343	TOD	TD	DONE	A	B	TSCO	0.005	20050622007H
ICST	6/23/2005 4 26 51 PM	6/23/2005 12	0 12:00 PM Sell	100000	100000	21.6015	GRC	JP	DONE	A	B	GSCO	0.05	2005062300R1
ICST	6/23/2005 4 27 3:00 PM	6/23/2005 12	0 12:00 PM Sell	26900	26900	21.6015	GCB	JP	DONE	A	B	GSCO	0.05	2005062300R2
ICST	6/23/2005 4 27 19 PM	6/23/2005 12	0 12:00 PM Sell	60000	60000	21.6015	TOD	JP	DONE	A	B	GSCO	0.05	2005062300R3
ICST	6/23/2005 4 27 56 PM	6/23/2005 12	0 12:00 PM Sell	25000	25000	21.65	COM	JP	DONE	A	B	GSCO	0.05	2005062300R5
ICST	6/23/2005 10 57 55 AM	6/23/2005 12	0 12:00 PM Sell	15000	15000	21.4826	BUJ	JP	DONE	A	B	PALC	0.03	20050623009W
ICST	6/28/2005 3 23 33 PM	6/28/2005 12	0 12:00 PM Sell	100000	100000	20.6448	TOD	JP	DONE	A	B	WARB	0.05	2005062800GK
ICST	6/28/2005 10 25 36 AM	6/28/2005 12	0 12:00 PM Sell	478314	478314	20.6448	GRC	JP	DONE	A	B	WARB	0.05	20050628006T
ICST	6/28/2005 10 25 50 AM	6/28/2005 12	0 12:00 PM Sell	88103	88103	20.6448	GCB	JP	DONE	A	B	WARB	0.05	20050628006U
ICST	6/28/2005 10 26 41 AM	6/28/2005 12	0 12:00 PM Sell	173000	173000	20.6448	COM	JP	DONE	A	B	WARB	0.05	20050628006X
ICST	6/29/2005 11 56 45 AM	6/29/2005 11	56 45 AM Sell	40800	24500	20.87	TOD	TD	PART	A	B	TSCO	0.005	2005062900AA
ICST	6/29/2005 10 19 39 AM	6/29/2005 12	0 12:00 PM Sell	50000	50000	20.76	POA	JP	DONE	A	B	GSCO	0.05	20050629006C
ICST	6/30/2005 9 43 32 AM	6/30/2005 9	43 32 AM Sell	116000	116000	20.8989	TOD	TD	DONE	A	B	TSCO	0.005	20050630002W

DX-4682M

POLYCOM

Transcation in Polycom Stock by Raj Rajaratnam for Galleon on December 21, 2005 (Manager Code: GRC) (DX 4688)			
Date/Time	Code	Transaction	Amount
12/21/2005 2:00 PM	GRC	Buy	40,000



GOV-00007724